

Exhibit 2

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE)
COMMISSION,)
)
Plaintiff,)
) Case No.
vs.) 20-civ-10832 (AT) (SN)
)
RIPPLE LABS, INC., BRADLEY)
GARLINGHOUSE, and CHRISTIAN A.)
LARSEN,)
)
Defendants.)

VIDEOTAPED DEPOSITION OF
ALAN SCHWARTZ
Friday, February 11, 2022

Reported by:
JEFFREY BENZ, RMR, CRR
STENOGRAPHIC REPORTER
JOB No. 220211JBE

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VIDEOTAPED DEPOSITION of ALAN SCHWARTZ, taken by
Plaintiff, at the offices of Debevoise & Plimpton, 919
Third Avenue, New York, New York, on February 11, 2022
commencing at 9:13 a.m., before Jeffrey Benz, a
Certified Realtime Reporter, Registered Merit Reporter
and Notary Public within and for the State of New York.

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18
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09:12 1 THE VIDEOGRAPHER: Good morning. We're now
09:12 2 on the record. Today's date is February 11, 2022.
09:12 3 The time is 9:13 a.m. This is Disk 1 of the video
09:12 4 deposition of Alan Schwartz, in the matter of SEC
09:12 5 versus Ripple Labs, et al.

09:12 6 My name is Jim Brady. I'm the
09:12 7 videographer. Today's court reporter is Jeff Benz.
09:12 8 We're both with Gradillas Reporting.

09:12 9 Today's deposition is taking place at
09:12 10 Debevoise & Plimpton, 919 Third Avenue, New York,
09:12 11 New York.

09:12 12 The attorneys' appearances will appear on
09:12 13 the transcript. May I ask now that the court
09:12 14 reporter please swear in the witness.

09:13 15 ALAN SCHWARTZ,
09:13 16 called as a witness, having been first
09:13 17 duly sworn by Jeffrey Benz, a Notary
09:13 18 Public within and for the State of New
09:13 19 York, was examined and testified as
09:13 20 follows:

09:10 21 EXAMINATION BY MR. HANAUER:

09:13 22 Q. Good morning, sir. My name's Ben Hanauer.
09:13 23 I represent the SEC, who's the plaintiff in this
09:13 24 lawsuit.

09:13 25 Can you please state your name for the

09:13 1 record.

09:13 2 A. Alan Schwartz.

09:13 3 Q. And, Professor Schwartz, is there any
09:13 4 reason why you cannot give accurate testimony today?

09:13 5 A. No.

09:13 6 Q. How many preparation sessions did you do
09:13 7 for today's deposition?

09:13 8 A. Four, I think. Three or four.

09:13 9 Q. And when were they?

09:13 10 A. Yesterday and Wednesday, and then a couple
09:13 11 of weeks ago we did a couple.

09:13 12 Q. And when you say "we," who was present for
09:13 13 those preparation sessions?

09:13 14 A. Mr. Figel, Mr. Gideon, and a gentleman
09:14 15 whose name I -- I never got Robert's last name.
09:14 16 There's another person, an employee of the firm, the
09:14 17 Kellogg Hansen firm.

09:14 18 Q. And how long total did you spend preparing
09:14 19 for today's deposition?

09:14 20 A. I would -- between 15 and 20 hours.

09:14 21 Q. And in your preparation, did you review any
09:14 22 documents other than the ones cited in your
09:14 23 October 4, 2021, report?

09:14 24 A. Yes, I did.

09:14 25 MR. FIGEL: Start -- say yes -- answer yes

09:14 1 or no. Give me a chance -- there may be some
09:14 2 privilege issues, so if you just give a pause after
09:14 3 Mr. Hanauer's question, please.

09:14 4 Q. And what did you review other than the
09:14 5 documents cited in your report?

09:14 6 MR. FIGEL: I direct you not to answer that
09:14 7 question based on attorney work product.

09:14 8 Q. Did you review any deposition transcripts?

09:14 9 A. No.

09:14 10 MR. FIGEL: Again, let me -- let me give
09:14 11 you the instruction --

09:14 12 THE WITNESS: Okay.

09:14 13 MR. FIGEL: -- but fine, start by answering
09:15 14 yes or no.

09:15 15 Q. Have you ever been deposed or given
09:15 16 testimony in a lawsuit before?

09:15 17 MR. FIGEL: You can answer.

09:15 18 A. Yes.

09:15 19 Q. How many times?

09:15 20 A. Over the years -- hard to remember over the
09:15 21 years. More than ten.

09:15 22 Q. And I guess I should probably split that
09:15 23 up. How many times have you been deposed in
09:15 24 connection with a lawsuit?

09:15 25 A. Same answer.

09:15 1 Q. Around 10?

09:15 2 A. Or more, 10, 12, something like that.

09:15 3 Q. And beyond those depositions, how many
09:15 4 times have you given testimony in a lawsuit?

09:15 5 A. Does that include an arbitration?

09:15 6 Q. Yes.

09:15 7 A. Four or five.

09:15 8 Q. Generally speaking, what were the cases
09:15 9 about that you've testified in?

09:16 10 A. They were in a variety of areas. I've been
09:16 11 an expert in bankruptcy, corporate governance,
09:16 12 contracts, sales.

09:16 13 Q. Have you ever offered expert testimony in a
09:16 14 case involving allegations of federal securities law
09:16 15 violations?

09:16 16 A. No.

09:16 17 Q. Have you ever testified as a fact witness?

09:16 18 A. No.

09:16 19 Q. How much of your professional time do you
09:16 20 spend working as a litigation expert or consultant on
09:16 21 one hand, as opposed to working as a law professor?

09:16 22 A. Less than 5 percent, maybe less than
09:16 23 3 percent.

09:16 24 Q. Has your expert testimony ever been
09:16 25 excluded for any reason?

09:17 1 A. Yes.

09:17 2 Q. Can you tell me about that, please.

09:17 3 A. It was -- it's hard to -- once I was an
09:17 4 expert in a dispute between oil companies, and a part
09:17 5 of my report was excluded on the ground that there
09:17 6 was economic analysis in it and I hadn't qualified as
09:17 7 an economic expert.

09:17 8 Q. And what case was that?

09:17 9 A. Well, I can't remember the name, but it was
09:17 10 between two big oil companies, involving oil leases
09:17 11 in Prudhomme Bay.

09:17 12 Q. Do you know what court that case was in?

09:17 13 A. What case.

09:17 14 I think that was in Washington, D.C.

09:17 15 Q. District -- federal court?

09:17 16 A. District court in Washington, D.C.

09:17 17 Q. Federal district court?

09:18 18 A. Yes.

09:18 19 Q. Has -- besides that occasion, has your
09:18 20 expert testimony ever been excluded for any other
09:18 21 reason?

09:18 22 A. Not that I can recall.

09:18 23 Q. Were you retained as an expert in a case
09:18 24 called Mason Capital versus Cayman Corp., in the
09:18 25 District of Connecticut?

09:18 1 A. Yes.

09:18 2 Q. And you testified at a trial that took
09:18 3 place in that case in October 2005?

09:18 4 A. I don't remember the date, but I did
09:18 5 testify in a trial.

09:18 6 Q. And one of the subjects of your testimony
09:18 7 in that case was about your beliefs about the meaning
09:18 8 of Connecticut's Business Combination Act?

09:18 9 A. I don't specifically recall, but I wouldn't
09:18 10 object to that characterization.

09:18 11 Q. And in that case, did the court grant the
09:18 12 opposing side's motion in limine to preclude that
09:18 13 portion of your testimony?

09:18 14 A. I think it did.

09:19 15 Q. And the reason the court excluded that
09:19 16 portion of your testimony was because the court found
09:19 17 the constructions of statutes is a judicial task and
09:19 18 not a proper subject of expert testimony?

09:19 19 A. I don't particularly recall why the court
09:19 20 excluded my re-- that part of my report. I don't
09:19 21 recall what the judge said or whether the judge wrote
09:19 22 something down.

09:19 23 Q. Any other instances where your testimony
09:19 24 was excluded?

09:19 25 A. Not that I can recall.

09:19 1 Q. Has a court ever expressed disagreement
09:19 2 with an opinion you expressed?

09:19 3 A. I -- I'm not exactly sure how to answer
09:20 4 that question because I -- I expressed -- when I
09:20 5 testified, the court didn't always come out on the
09:20 6 side for which I was an expert.

09:20 7 Q. So there are cases where you testified
09:20 8 where ultimately the other side prevailed in the
09:20 9 lawsuit?

09:20 10 A. I think so.

09:20 11 Q. You're a professor at the Yale Law School?

09:20 12 A. That's correct.

09:20 13 Q. Since when?

09:20 14 A. 1987.

09:20 15 Q. And have you held any other employment
09:20 16 since 1987?

09:20 17 A. I'm also a professor in the Yale School of
09:20 18 Management.

09:20 19 Q. Any other employment over the past
09:20 20 30 years?

09:20 21 A. No.

09:20 22 Q. Are you a member -- sit on any corporate
09:20 23 boards?

09:20 24 A. I have sat on corporate boards.

09:20 25 Q. Which ones?

09:20 1 A. Rhone Industries. Cliffs Natural

09:20 2 Resources, and Furniture Brands.

09:21 3 Q. Are you still on any of those boards?

09:21 4 A. No.

09:21 5 Q. Why did you leave?

09:21 6 A. I aged out.

09:21 7 Well, actually I ages out of Cliffs Natural

09:21 8 Resources and Furniture Brands. We sold Rhone

09:21 9 Industries.

09:21 10 Q. Understood.

09:21 11 And what's your date of birth, sir?

09:21 12 A. [REDACTED], 1940.

09:21 13 Q. Are you licensed to practice law?

09:21 14 A. Not currently.

09:21 15 Q. When were you last licensed to practice

09:21 16 law?

09:21 17 A. Actually, I -- I'm going to give a little

09:21 18 bit of a complicated answer to that question. I was

09:21 19 a member of the New York Bar. I think that I let my

09:21 20 membership lapse.

09:21 21 I think if you're a professor at an

09:21 22 accredited Connecticut law school for a certain

09:21 23 period of time, you become a member of the

09:21 24 Connecticut Bar.

09:22 25 Q. So when did your New York law license

09:22 1 lapse?

09:22 2 A. I don't recall how long it takes for a
09:22 3 license to lapse, but I have not practiced law in
09:22 4 New York for a very long time.

09:22 5 Q. Have you practiced law anywhere else?

09:22 6 A. No.

09:22 7 Q. Have you ever represented clients in court?

09:22 8 A. No.

09:22 9 Well, I have when I was a practicing
09:22 10 attorney.

09:22 11 Q. And when you say "a long time ago," is
09:22 12 there any way we can --

09:22 13 A. I left the -- yes, I left practice in 1969.

09:22 14 Q. And when you did practice, did you have
09:22 15 areas of expertise or specialization?

09:22 16 A. I was a litigator.

09:22 17 Q. You are an expert in contract law?

09:22 18 A. I think so, yes.

09:22 19 Q. Do you consider yourself an expert in the
09:22 20 federal securities laws?

09:22 21 A. No.

09:23 22 Q. Are you qualified to offer expert testimony
09:23 23 on how courts interpret the term, "investment
09:23 24 contract," in cases applying the federal securities
09:23 25 laws?

09:23 1 MR. FIGEL: Objection. You can answer.

09:23 2 A. No, I'm not an expert in the federal
09:23 3 securities laws.

09:23 4 Q. And will you be offering any such opinions
09:23 5 in this case about how courts interpret the term,
09:23 6 "investment contract," under the federal securities
09:23 7 laws?

09:23 8 A. No.

09:23 9 Q. Are you offering an opinion that under the
09:23 10 federal securities laws, investment contracts are
09:23 11 limited to common law contracts?

09:23 12 MR. FIGEL: Objection.

09:23 13 A. No.

09:23 14 Q. Are you offering an opinion that investment
09:23 15 contracts under the federal securities laws cannot
09:23 16 contain representations beyond the four corners of
09:23 17 any common law contract?

09:23 18 A. No, I'm not offering an opinion.

09:24 19 Q. Are you offering an opinion whether any of
09:24 20 Ripple's offers or sales of XRP qualify for an
09:24 21 exemption from registration under the federal
09:24 22 securities laws?

09:24 23 A. No.

09:24 24 Q. Are you an expert in the field of
09:24 25 blockchain technologies?

09:24 1 A. No.

09:24 2 Q. Are you an expert in the field of digital
09:24 3 assets or cryptocurrencies?

09:24 4 A. No.

09:24 5 Q. Before this case, have you ever worked on a
09:24 6 case involving digital assets or cryptocurrencies?

09:24 7 A. No.

09:24 8 Q. And I believe I tendered Exhibit 1. It
09:24 9 should be sitting right in front of you.

09:24 10 A. Yes.

09:24 11 MR. HANAUER: Do you want to share with --
09:25 12 oh, you did. Good. Thank you.

09:25 13 Q. And Exhibit 1, that's the expert report you
09:25 14 submitted in this case, on October 4, 2021?

09:25 15 A. Yes.

09:25 16 (Expert Report of Alan Schwartz, dated
09:25 17 October 4, 2021, was marked Exhibit AS-1 for
09:25 18 identification, as of this date.)

09:25 19 Q. And on page 65 of the report, is that your
09:25 20 signature?

09:25 21 A. Yes, it is.

09:25 22 Q. Did anyone assist you in the preparation of
09:25 23 your report?

09:25 24 MR. FIGEL: Answer that question yes or no.

09:25 25 A. Yes.

09:25 1 Q. Who?

09:25 2 A. Mr. Figel.

09:25 3 Q. Anyone else?

09:25 4 A. No.

09:25 5 Q. Did you write the whole report?

09:25 6 A. Yes.

09:25 7 Q. Was anything in the report written by

09:25 8 Ripple's attorneys?

09:25 9 A. No.

09:25 10 Q. Did Ripple's attorneys direct you to write

09:25 11 anything?

09:26 12 A. No.

09:26 13 Q. Who prepared Exhibits C through F to your

09:26 14 report?

09:26 15 A. I think employees of Mr. Figel's firm.

09:26 16 Q. Do you know who?

09:26 17 A. I think it was -- I think it is Robert --

09:26 18 Q. Well, I don't want you to speculate. Just

09:26 19 to the best of your knowledge, do you know who

09:26 20 prepared Exhibits C to F of your report?

09:26 21 A. No.

09:26 22 MR. FIGEL: Just so you know, it's not a

09:26 23 mystery, but I'm not allowed to testify.

09:26 24 Q. Is there -- and -- just so I have that,

09:26 25 Mr. Figel is the only attorney who assisted you in

09:26 1 the preparation of your report?

09:26 2 A. There were other attorneys on phone calls,
09:26 3 but Mr. Figel played the largest role.

09:26 4 Q. Can you name any of the other attorneys?

09:26 5 A. Gavan Gideon.

09:26 6 Q. Anyone else?

09:26 7 A. No.

09:27 8 Q. Is there anything in your report that is
09:27 9 inaccurate?

09:27 10 A. Not to my knowledge.

09:27 11 Q. Just so we're clear for the record, when I
09:27 12 say "report," I'm referring to Exhibit 1.

09:27 13 A. Yes.

09:27 14 Q. Is there anything in your report that you
09:27 15 need to correct or supplement?

09:27 16 A. Not -- not now.

09:27 17 Q. Does your report contain -- well, do you
09:27 18 intend to supplement your report in the future?

09:27 19 A. That would depend on events yet to occur.

09:27 20 Q. Do you have any intention to at this time?

09:27 21 A. No.

09:27 22 Q. Does your report contain a complete
09:27 23 statement of all the opinions you will express in
09:27 24 this case?

09:27 25 A. Yes.

09:27 1 MR. FIGEL: Objection.

09:27 2 You can answer.

09:27 3 A. Yes.

09:27 4 Q. Does your report contain all the bases and
09:27 5 reasons for the opinions you are offering?

09:27 6 MR. FIGEL: Objection.

09:28 7 A. Yes.

09:28 8 Q. Does your report identify all the facts and
09:28 9 data you considered in forming the opinions expressed
09:28 10 in your report?

09:28 11 A. Yes.

09:28 12 Well, let me clarify.

09:28 13 I've had conversations about the nature of
09:28 14 crypto markets with various people, and I assume that
09:28 15 they -- they were informative for me, but they --
09:28 16 those conversations aren't in this report.

09:28 17 Q. Did you rely on any of those conversations,
09:28 18 in forming -- well, strike that.

09:28 19 Did you consider any of those
09:28 20 conversations, in forming the opinions you're
09:28 21 expressing in this case?

09:28 22 A. No.

09:28 23 Q. Besides the contracts which you
09:29 24 specifically refer to in the report, are all of the
09:29 25 facts and data that you relied on listed in Exhibit B

09:29 1 to your report?

09:29 2 A. Let me look at Exhibit B.

09:29 3 Yeah, that's the materials I considered.

09:29 4 Q. And from Exhibit B, it looks like the only
09:29 5 document prepared by an attorney in this case that
09:29 6 you considered, was the SEC's amended complaint.

09:29 7 A. That's correct.

09:29 8 Q. Did you consider any of the SEC's
09:29 9 interrogatory responses?

09:30 10 A. I considered them after this report was
09:30 11 written.

09:30 12 Q. Which ones?

09:30 13 A. I can't exactly remember. I visited --
09:30 14 what's the name of the document that the SEC
09:30 15 submitted in response? I read one document the SEC
09:30 16 prepared after I prepared this report.

09:30 17 Q. So a single interrogatory response?

09:30 18 A. Yeah, it was response to interrogatories.
09:30 19 That's -- I think it was.

09:30 20 Q. Do those -- after reviewing those
09:30 21 interrogatory responses, does that in any way impact
09:30 22 the opinions you're offering in this case?

09:30 23 A. No.

09:30 24 Q. You considered the amended complaint in
09:30 25 this case in forming your opinions?

09:30 1 A. The SEC's amended complaint?

09:30 2 Q. Yes, sir.

09:30 3 A. Yes.

09:30 4 Q. Did you read the whole thing?

09:31 5 A. Yes.

09:31 6 Q. Are you offering the opinion that any
09:31 7 allegation in the complaint is untrue?

09:31 8 A. No.

09:31 9 Q. Do -- so -- you said that after you wrote
09:31 10 your report, you reviewed one of the SEC's
09:31 11 interrogatory responses. After you signed your
09:31 12 report, have you reviewed any other documents or
09:31 13 information that are relevant to the opinions
09:31 14 expressed in your report?

09:31 15 MR. FIGEL: You can answer if you
09:31 16 understand the question.

09:31 17 And don't identify what they are yet.

09:31 18 A. Yes.

09:31 19 Q. And what documents are those?

09:31 20 MR. FIGEL: You can answer, but don't
09:31 21 reveal any documents that you were shown in
09:31 22 connection with your preparation for your testimony.

09:32 23 A. I looked at additional contracts of Ripple.

09:32 24 Q. How many?

09:32 25 A. Hundreds.

09:32 1 Q. And how would I be able to tell which
09:32 2 contracts you reviewed after signing your report?

09:32 3 A. They wouldn't be -- they wouldn't be
09:32 4 referred to in my report.

09:32 5 Q. Does your review -- are those documents
09:32 6 that you reviewed after signing your report in any
09:32 7 way relevant to your report?

09:32 8 A. In any way, it's very broad. I reviewed
09:32 9 them to see whether there were any inconsistencies
09:32 10 between the -- those contracts and my report.

09:33 11 Q. And how many -- you said there are hundreds
09:33 12 that you reviewed?

09:33 13 A. Yeah. I think there were 1700 in total.

09:33 14 Q. Well, there are 1700 listed in your report.
09:33 15 How many did you review after your report was signed?

09:33 16 A. I can't remember. A lot.

09:33 17 Q. More than a hundred?

09:33 18 A. Yes.

09:33 19 Q. More than 200?

09:33 20 A. Probably.

09:33 21 Q. More than 500?

09:33 22 A. Yes. I -- yeah, more than -- yes.

09:33 23 Q. And you reviewed the entirety of those
09:33 24 500-plus contracts?

09:33 25 A. Yes.

09:33 1 Q. Did you review more than 700 contracts?

09:33 2 A. I -- I basically went through all of them,
09:33 3 in the binders that were submitted, that I had.

09:33 4 Q. Who submitted binders to you?

09:33 5 A. The Kellogg firm gave me binders and
09:33 6 informed me that those binders had Ripple contracts
09:34 7 in them, which they did.

09:34 8 Q. Did they -- those binders have all 1700
09:34 9 contracts?

09:34 10 A. I didn't -- I didn't count them.

09:34 11 Q. What's your best approximation of the
09:34 12 number of contracts you reviewed after signing your
09:34 13 report?

09:34 14 A. Over a thousand.

09:34 15 Q. All 1700 contracts cited in your report?

09:34 16 A. It would be hard, honestly, to say every
09:34 17 one, but a very large proportion.

09:34 18 Q. Do you still have those contracts?

09:34 19 A. I do.

09:34 20 Q. Do the opinions in your report rely on any
09:34 21 assumptions?

09:34 22 MR. FIGEL: Objection.

09:34 23 A. I would have to review my report, but I
09:34 24 don't think I made very many assumptions in it.

09:35 25 Q. Did anyone ask you to make any assumptions,

09:35 1 in preparing your report?

09:35 2 MR. FIGEL: Start with answering yes or no.

09:35 3 THE WITNESS: What?

09:35 4 MR. FIGEL: Start by answering yes or no.

09:35 5 A. No.

09:35 6 Q. Will you be offering any opinions in this
09:35 7 case that are not contained in your report?

09:35 8 A. No.

09:35 9 Q. Will you be offering any opinions related
09:35 10 to the conduct of either of the individual defendants
09:35 11 in this case?

09:35 12 A. No.

09:35 13 Q. Will you be offering any opinion related to
09:35 14 industry custom or practice?

09:35 15 A. No.

09:35 16 MR. FIGEL: Objection. You can answer.

09:35 17 Q. Will you be offering an opinion related to
09:35 18 any of the defendants' affirmative defenses?

09:35 19 A. No.

09:35 20 Q. Will you be offering rebuttal testimony to
09:35 21 any of the SEC's experts?

09:35 22 A. No.

09:36 23 Q. Have you read any of the other expert
09:36 24 reports in this case?

09:36 25 A. No.

09:36 1 Q. How many hours did you work on this
09:36 2 engagement prior to completing your report?

09:36 3 So from the time you got -- you signed your
09:36 4 engagement to the time you signed your report.

09:36 5 A. 35 to 40 hours.

09:36 6 Q. And that includes preparing your report?

09:36 7 A. Yes.

09:36 8 Q. And it includes reviewing all the contracts
09:36 9 cited in your report?

09:36 10 MR. FIGEL: Objection.

09:36 11 Q. The answer is yes? I'm sorry. You need to
09:36 12 give a verbal answer.

09:36 13 A. Yes.

09:36 14 Q. How much time did you spend reviewing the
09:37 15 contracts that you received after you signed the
09:37 16 report?

09:37 17 A. Maybe eight to ten hours.

09:37 18 Q. How much money have you billed so far for
09:37 19 this case?

09:37 20 A. Approximately \$50,000.

09:37 21 Q. Your rate is \$1,200 an hour?

09:37 22 A. Yes.

09:37 23 Q. Is that your standard billing rate?

09:37 24 A. Yes.

09:37 25 Q. Since when?

09:37 1 A. Since the last two or three years.

09:37 2 Q. Have you ever charged that much per hour in
09:37 3 another case?

09:37 4 A. Yes.

09:37 5 Q. Have you ever billed more as an expert
09:38 6 witness than in this case?

09:38 7 A. No.

09:38 8 Q. So in preparing your report, how many
09:38 9 contracts did you personally review?

09:38 10 A. I think about 140 to 150.

09:38 11 Q. And how long did that review and analysis
09:38 12 take?

09:38 13 A. I can't really recall what proportion of
09:38 14 the time I spent was spent writing or thinking or
09:38 15 reading or -- I just can't really break it down.

09:38 16 Q. So, the 35- to 40-hour number you gave me a
09:38 17 couple minutes ago, that included both reviewing and
09:39 18 analyzing contracts and drafting your report?

09:39 19 A. Yes.

09:39 20 Q. Does your report identify the specific
09:39 21 140 contracts that you reviewed?

09:39 22 A. I think my report refers to 17 in specific
09:39 23 contracts.

09:39 24 Q. And if I wanted to know the remaining
09:39 25 120-plus contracts that you personally reviewed in

09:39 1 preparing your report, how would I figure that out?

09:39 2 A. Well, the -- the difficulty is all these
09:39 3 contracts are very much like each other, so a way to
09:39 4 go about that would be to see what was supplied to me
09:39 5 before the date of my report.

09:40 6 Q. Okay. And unfortunately, I don't have that
09:40 7 information. So what I'm trying to get at is, is
09:40 8 there any record of the 17 or so contracts that you
09:40 9 personally -- or -- I'm sorry.

09:40 10 Is there any record of the 140 contracts
09:40 11 you reviewed to prepare your report?

09:40 12 A. I think if you did email discovery, you
09:40 13 would see that there were emails which would say
09:40 14 things like, We're sending you X, or we're sending
09:40 15 you Y.

09:40 16 MR. FIGEL: I'm -- I'm sorry to interrupt.

09:40 17 I'm -- I'm allowing you to answer these
09:40 18 questions because he's interested, but be careful not
09:40 19 to reveal communications --

09:40 20 THE WITNESS: No.

09:40 21 MR. FIGEL: -- the substance of
09:40 22 communications with our firm and -- and you.

09:40 23 THE WITNESS: Okay.

09:40 24 Q. So, I -- I just want to make sure I have
09:41 25 this right. So the 140 contracts you reviewed in

09:41 1 preparing your report, were those all emailed to you
09:41 2 by Ripple's counsel?

09:41 3 MR. FIGEL: You can answer yes or no.

09:41 4 A. No.

09:41 5 Q. Okay. So again, I'm just trying to figure
09:41 6 out which 140 contracts you -- you reviewed.

09:41 7 A. Well, I -- I'm not trying to be evasive.
09:41 8 They sent me boxes with things in them that -- so
09:41 9 they weren't emailed.

09:41 10 Q. So the 140 contracts you reviewed, were
09:41 11 those the only 140 contracts you got, or were they --
09:41 12 from Ripple's counsel, or were they part of a larger
09:41 13 set?

09:41 14 MR. FIGEL: Objection.

09:41 15 You can answer if you understand.

09:41 16 A. They were obviously part of a larger set
09:41 17 because we have the full set.

09:42 18 Q. Are you aware of any record showing the
09:42 19 specific 100 -- strike that.

09:42 20 Are you aware of any record that documents
09:42 21 the specific 140 contracts you personally reviewed
09:42 22 before signing your report?

09:42 23 A. No.

09:42 24 Q. Is there a way to figure that out?

09:42 25 A. Yes.

09:42 1 Q. How?

09:42 2 A. Well, I could go through my office in
09:42 3 New Haven and see what I had there. And I would
09:42 4 check when I got what, because there were, as I said,
09:42 5 messages.

09:42 6 And ultimately, I could come up with the
09:42 7 ones I looked at before October 4 and the ones I
09:42 8 looked at after.

09:42 9 Q. You have to -- is there -- did you take
09:42 10 notes of any of that, or would you have to go
09:42 11 basically on memory, I reviewed this before signing
09:42 12 my report, or I reviewed it after signing my report?

09:42 13 A. Well, as I said, I'm not trying to be
09:43 14 evasive. I have two offices, one in New Haven and
09:43 15 one in New York. I did most of the work on the
09:43 16 report in New Haven, but -- but since then, I've been
09:43 17 mainly working in New York.

09:43 18 So I could go through my -- my New Haven
09:43 19 office would probably have a lot of the stuff I did
09:43 20 before the report, and my New York office would have
09:43 21 a lot of other stuff.

09:43 22 Q. Do you have any records reflecting which
09:43 23 140 contracts you reviewed prior to signing your
09:43 24 report?

09:43 25 A. No.

09:43 1 Q. Now, prior to signing your report, who
09:43 2 reviewed the other 1500-plus contracts cited in your
09:43 3 report?

09:43 4 A. I don't know.

09:43 5 Q. And prior to -- did you -- signing your
09:44 6 report, did you have any firsthand knowledge of the
09:44 7 contents of the contracts you did not review?

09:44 8 A. No.

09:44 9 Q. Did you give direction to anybody regarding
09:44 10 the 1500 plus contracts that you did not review?

09:44 11 A. Yes.

09:44 12 Q. Who did -- first of all, who did you give
09:44 13 direction to?

09:44 14 A. By who --

09:44 15 MR. FIGEL: You can answer. Give names.

09:44 16 A. To Mr. Figel, to Mr. Gideon, and to --
09:44 17 what's Robert's last name?

09:44 18 MR. FIGEL: Can I answer?

09:44 19 Moore, M-O-O-R-E.

09:44 20 A. Right. To Mr. Moore.

09:44 21 Q. And do you know if they were the ones
09:44 22 reviewing the contracts?

09:44 23 A. Do I personally know? No.

09:44 24 Q. And what direction did you give them?

09:45 25 A. I directed -- I directed them to look for

09:45 1 representative contracts in the categories that I
09:45 2 thought were germane.

09:45 3 Q. And are those the categories identified in
09:45 4 your report?

09:45 5 A. They are.

09:45 6 Q. And did this occur -- this direction you
09:45 7 gave to counsel to categorize the contracts, was this
09:45 8 before or after you had reviewed the 140 contracts?

09:45 9 A. Before.

09:45 10 Q. Had you reviewed any contracts at the time
09:45 11 you gave counsel that direction?

09:45 12 A. I think I re-- I reviewed a small number.

09:45 13 Q. Like how many?

09:45 14 A. I -- I can't recall how many.

09:46 15 Q. Who came up with the categories?

09:46 16 A. Me.

09:46 17 Q. And how did you come up with those
09:46 18 categories before you had finished reviewing the
09:46 19 140 contracts?

09:46 20 A. I had some understanding of Ripple's
09:46 21 business model, which led me to think that they had
09:46 22 contracts in these various categories.

09:46 23 And I wanted to see whether those contracts
09:46 24 would be relevant to any opinions that I was retained
09:46 25 to give. And so essentially the process was I had a

09:46 1 small sample, and I wanted a bigger sample.

09:46 2 Q. And how did you gain an understanding of
09:46 3 Ripple's business model?

09:46 4 A. I -- as a general matter, I had a sense of
09:47 5 what cryptocurrency companies do, and I think I
09:47 6 had -- without revealing any substance, I had
09:47 7 conversations with counsel about, So what kind of
09:47 8 company is this, and so on.

09:47 9 Q. So you learned about Ripple's business
09:47 10 model through communicating with counsel?

09:47 11 A. I learned -- I learned about -- generally
09:47 12 learned about what cryptocurrencies do just because,
09:47 13 if you're interested in commerce and you were in
09:47 14 a -- a lead institution, you talk about these things
09:47 15 with people who know them.

09:47 16 And I wanted to confirm the general view I
09:47 17 had of this kind of industry with -- I wanted to see
09:47 18 whether this company was sort of like the others
09:47 19 that -- or basically a typical cryptocurrency
09:47 20 company.

09:48 21 Q. What did you do to supervise the work of
09:48 22 the attorneys acting at your direction?

09:48 23 A. I didn't directly supervise the attorneys.

09:48 24 Q. What did you do to verify the accuracy of
09:48 25 their work?

09:48 1 A. Well, if -- if I wanted to see direct sales
09:48 2 contracts, and I had seen a couple before the
09:48 3 attorneys were going to get me more of them, I
09:48 4 essentially internally reviewed to see whether what I
09:48 5 was being shown were direct sales contracts, in that
09:48 6 category.

09:48 7 Q. So for the contracts listed on Exhibits C
09:48 8 through F to your report, what did you do to verify
09:48 9 that those exhibits accurately categorized the
09:49 10 contracts?

09:49 11 A. I'm not sure --

09:49 12 MR. FIGEL: Objection.

09:49 13 You can answer.

09:49 14 A. Also I'm not sure I understand that
09:49 15 question.

09:49 16 Q. What did you do to make sure Exhibit -- to
09:49 17 verify that Exhibits C to F to your report -- well,
09:49 18 let me back up.

09:49 19 You -- you testified you did not prepare
09:49 20 Exhibits C to F to your report, correct?

09:49 21 A. That's correct.

09:49 22 Q. And you also testified you don't know who
09:49 23 prepared them?

09:49 24 A. I don't have -- no -- I mean, I have a
09:49 25 suspicion, but I wouldn't want to testify that I

09:49 1 actually know.

09:49 2 Q. So, what did you do to verify that these
09:49 3 Exhibits C to F are accurate?

09:49 4 A. I'm not sure what you mean by "accurate."

09:49 5 Q. Well, so, for instance, Exhibit C lists
09:49 6 hundreds of sales contracts.

09:49 7 A. Yes.

09:49 8 Q. What did you do to verify that each
09:50 9 contract listed on Exhibit C appropriately belongs to
09:50 10 be listed along with the other sales contracts?

09:50 11 MR. FIGEL: Objection.

09:50 12 A. I looked at a lot of them to see whether
09:50 13 they were sales contracts or not.

09:50 14 Q. And that was the work you did after signing
09:50 15 your report?

09:50 16 A. Some before, some after.

09:50 17 Q. So, how many -- how many hours did you
09:50 18 spend -- well, let -- you -- just to take a step
09:50 19 back.

09:50 20 You said before you signed your report, you
09:50 21 had only looked at 140 contracts. Right?

09:50 22 A. Yes.

09:50 23 Q. And then --

09:50 24 A. Approximately 140.

09:50 25 Q. What did you do at the time you signed your

09:50 1 report to verify that the other 1500 contracts listed
09:50 2 on the exhibits to your report were accurately
09:50 3 categorized?

09:51 4 MR. FIGEL: Objection.

09:51 5 A. I didn't do -- the only way to verify --
09:51 6 let me back up.

09:51 7 I asked the attorneys for a representative
09:51 8 sample of contracts in each of the categories that I
09:51 9 thought would be relevant, and I relied on the
09:51 10 attorneys to pick contracts in those categories that
09:51 11 would, when I looked at the entire universe,
09:51 12 accurately represent the entire universe.

09:51 13 Q. And the result of that direction was the
09:51 14 Exhibits C to F to your report?

09:51 15 A. Yes.

09:51 16 Q. And before you signed your report, what did
09:51 17 you do to verify that Exhibits C through F were
09:51 18 accurate?

09:52 19 A. I think I've answered this question, but if
09:52 20 you want me to try again, I'll try again.

09:52 21 Exhibits C through F are -- are the
09:52 22 universe. When I wrote my report, I didn't see the
09:52 23 entire universe.

09:52 24 I relied on the attorneys to give me
09:52 25 contracts in these categories that would be accurate

09:52 1 samples of the entire universe.

09:52 2 Q. And did you do anything prior to signing
09:52 3 your report to verify the attorneys' work?

09:52 4 A. No.

09:52 5 Q. Is it your understanding that the
09:52 6 1700 contracts listed on Exhibits C to F of your
09:52 7 report reflect all of Ripple's offers and sales of
09:52 8 XRP at issue in this lawsuit?

09:53 9 A. No.

09:53 10 Q. How many offers and sales of XRP by Ripple
09:53 11 that are at issue in this lawsuit are not reflected
09:53 12 on Exhibits C to F of your report?

09:53 13 MR. FIGEL: Objection.

09:53 14 A. I don't --

09:53 15 MR. FIGEL: You can answer.

09:53 16 A. I don't know.

09:53 17 Q. Do you know how many offers and sales of
09:53 18 XRP Ripple made between February 2013 and
09:53 19 December 2020 that are not reflected on Exhibit --
09:53 20 not reflected by one of the contracts on Exhibits C
09:53 21 to F of your report?

09:53 22 MR. FIGEL: Objection.

09:53 23 A. No.

09:53 24 Q. Do you know whether Ripple made offers or
09:53 25 sales of XRP that were not reflected by written

09:53 1 agreement?

09:53 2 MR. FIGEL: Objection.

09:53 3 A. No.

09:54 4 Q. If Ripple had offered or sold XRP but did
09:54 5 not document those offers or sales in a written
09:54 6 agreement, did you consider those offers or sales in
09:54 7 forming your opinions?

09:54 8 MR. FIGEL: Objection.

09:54 9 A. No.

09:54 10 Q. Are you offering an opinion on any offer or
09:54 11 sale or transfer of XRP not reflected by one of the
09:54 12 contracts listed in your report?

09:54 13 A. No.

09:54 14 Q. Are you offering -- are you offering an
09:54 15 opinion on whether any computer code deployed on a
09:54 16 blockchain represents an enforceable contract?

09:54 17 MR. FIGEL: Objection.

09:54 18 A. No.

09:54 19 Q. Are you offering an opinion on any of the
09:54 20 statements or representations made on Ripple's
09:54 21 website?

09:54 22 A. No.

09:55 23 Q. Did you consider any such statements or
09:55 24 representations in forming your opinions?

09:55 25 A. The only ones that I considered were in

09:55 1 your complaint and response to interrogatories.

09:55 2 Q. Are you offering an opinion on any press
09:55 3 release or social media posting made by Ripple or its
09:55 4 personnel?

09:55 5 A. No.

09:55 6 Q. Have you spoken with any purchaser of XRP?

09:55 7 A. No.

09:55 8 Q. And do you own any XRP?

09:55 9 A. No.

09:55 10 Q. Do you own any digital asset or
09:55 11 cryptocurrency?

09:55 12 A. No.

09:55 13 Q. Have you ever?

09:55 14 A. No.

09:55 15 Q. Are you offering an opinion on any
09:55 16 purchaser or holder of XRP's motives or intentions?

09:55 17 A. No.

09:56 18 Q. And then in your report, you refer to
09:56 19 the -- the various -- let's just go to your report.
09:56 20 Can you go, please, to paragraph 5 on page 4 of your
09:56 21 report.

09:56 22 And I want to direct you just to the last
09:56 23 sentence of paragraph 4 -- I'm sorry -- paragraph 5,
09:56 24 the one that reads, Of those contracts, I have
09:56 25 personally reviewed more than 140 contracts that were

09:56 1 exemplars of the categories and subcategories set
09:56 2 forth in this declaration.

09:56 3 A. Yes.

09:56 4 Q. And who determined the -- those 140
09:57 5 contracts were exemplars?

09:57 6 A. The attorneys.

09:57 7 Q. And who selected the 140 contracts that you
09:57 8 would review?

09:57 9 A. The attorneys.

09:57 10 Q. What direction, if any, did you give to the
09:57 11 attorneys who selected those 140 contracts for you?

09:57 12 A. I -- I think I've answered this question,
09:57 13 but -- to say again, I created the categories. And
09:57 14 so, for example, I said, I would like to see direct
09:57 15 sales contracts that were representative of the
09:57 16 direct sales contracts that Ripple sold XRP under.

09:58 17 Q. And just so I'm clear, you came up with
09:58 18 those categories before you started reviewing
09:58 19 contracts?

09:58 20 A. Well, I saw -- I had saw a few contracts at
09:58 21 the start, just to see what was going on. But the
09:58 22 very bulk of the contracts that I reviewed, I
09:58 23 reviewed after I communicated the categories to the
09:58 24 attorneys and had them do a search.

09:58 25 Q. And then following your initial review of

09:58 1 the 140 contracts, you were provided with access to
09:58 2 all 1700-plus contracts listed in Exhibits C
09:58 3 through F?

09:58 4 A. I guess I could see whatever I wanted to
09:58 5 see.

09:58 6 Q. Well, you said you were -- in your report,
09:58 7 it says you were given access to those 1700.

09:58 8 A. Yes.

09:58 9 Q. If you just describe the access you were
09:58 10 given.

09:59 11 A. I could ask the attorneys for contracts,
09:59 12 and they would provide them.

09:59 13 Q. Were all of the contracts that you had --
09:59 14 were all the contracts that were provided to you,
09:59 15 were they provided to you in paper form or electronic
09:59 16 form?

09:59 17 MR. FIGEL: Objection.

09:59 18 A. The contracts were provided in paper form.

09:59 19 Q. Were you given access to any sort of
09:59 20 database containing the contracts?

09:59 21 A. No. I was given the contracts.

09:59 22 Q. In hard-copy form.

09:59 23 A. Yes.

09:59 24 Q. Were any contracts emailed to you?

09:59 25 A. No.

09:59 1 Q. And the contracts that you were physically
09:59 2 given copies of, was -- were they all the 1700
09:59 3 contracts?

09:59 4 A. I have all of them now.

10:00 5 Q. Did you have all 1700 contracts before you
10:00 6 signed your report?

10:00 7 A. No.

10:00 8 Q. Just the 140?

10:00 9 A. I don't recall how many I had. But I
10:00 10 didn't have the full universe of 1700.

10:00 11 Q. And when did you actually get the full
10:00 12 universe?

10:00 13 A. I think it was in -- sometime after I
10:00 14 signed my report and when there was, I think the
10:00 15 earliest schedule depositions. I recall the
10:00 16 depositions were scheduled for early January and then
10:00 17 were moved, and sometime before then and after my
10:00 18 report.

10:00 19 Q. How many of the 1700 contracts did you
10:00 20 personally review?

10:00 21 MR. FIGEL: Objection.

10:00 22 You can answer.

10:00 23 A. I reviewed most of them.

10:00 24 I would say a very large percentage.

10:00 25 Q. And in the course of that review, did you

10:00 1 review all of those -- the entirety of each contract?

10:01 2 A. No.

10:01 3 Q. How many of the 1700 contracts did you not
10:01 4 read the entirety of?

10:01 5 MR. FIGEL: Objection.

10:01 6 A. I didn't -- I was looking for particular
10:01 7 things in those contracts. So either they were there
10:01 8 or they weren't, so I didn't feel that I had to read
10:01 9 the entire document.

10:01 10 So I didn't.

10:01 11 Q. And that's the case with all 1700
10:01 12 contracts.

10:01 13 A. Some I read the -- there were some that I
10:01 14 had to read the entire document to get a sense of
10:01 15 what it was about. There were others when, because
10:01 16 they were form contracts that were -- each one was
10:01 17 very much like the other, I just checked to make sure
10:01 18 that Contract 47, for example, was like Contract 46.

10:01 19 Q. And again, you said that there were some of
10:01 20 the 1700 contracts you didn't review at all.
10:02 21 Correct?

10:02 22 A. Well, that would be a pretty small
10:02 23 fraction.

10:02 24 Q. But there are some.

10:02 25 A. Well, to be exact, there were these big

10:02 1 binders. I went through them. It could be that I
10:02 2 turned pages inaccurately or my attention flagged for
10:02 3 a moment, but essentially my object was to go through
10:02 4 everything in the binder.

10:02 5 Q. But not word for word.

10:02 6 A. Well, I was looking for particular words.
10:02 7 If I saw them, I would read them. If they were
10:02 8 absent, then I didn't have to read them.

10:02 9 Q. So if a contract had a provision in it that
10:02 10 you weren't necessarily looking for, you may not have
10:02 11 reviewed that provision.

10:02 12 A. Yes.

10:02 13 Q. Of the contracts -- well, why didn't you
10:02 14 read all -- the entirety of all 1700 contracts?

10:03 15 A. Because I was interested in whether Ripple
10:03 16 assumed any -- or whether there were words in any of
10:03 17 these contracts that would support an inference that
10:03 18 Ripple assumed post-sale obligations toward a buyer
10:03 19 of XRP. And there was a question whether such words
10:03 20 were in any of these contracts or not, and I looked
10:03 21 to see whether they were.

10:03 22 Q. So does that mean you reviewed every page
10:03 23 of each contract to make sure that those provisions
10:03 24 were not there?

10:03 25 MR. FIGEL: Objection.

10:03 1 A. No. I didn't have to do that because, as I
10:03 2 said, they were form contracts. So if in Contract 37
10:03 3 these words would appear or not appear in a relevant
10:04 4 part of the contract, I would look at that. For
10:04 5 example, I was interested in whether there were
10:04 6 disclaimers, so I would look for those.

10:04 7 Essentially, I searched these contracts
10:04 8 consistent with what I said in my report.

10:04 9 Q. Of the contracts you reviewed, did any
10:04 10 contain a provision that you considered to be vague
10:04 11 or ambiguous?

10:04 12 A. Not the -- not the words that I read.

10:04 13 Q. And of the components of the contracts that
10:04 14 you did not review, how would you know whether they
10:04 15 contained terms that are vague or ambiguous?

10:04 16 A. I wouldn't know that if I didn't read them.

10:05 17 Q. So going back to -- you said you reviewed
10:05 18 a -- a relatively small amount -- you initially
10:05 19 reviewed a relatively small amount of contracts and
10:05 20 then came up with the categories described in your
10:05 21 report?

10:05 22 A. Yeah.

10:05 23 Q. Were Ripple's lawyers involved in coming up
10:05 24 with those categories?

10:05 25 MR. FIGEL: You can answer yes or no.

10:05 1 A. No. They were my categories.

10:05 2 Q. Are the categories you selected the only
10:05 3 reasonable way to categorize the contracts identified
10:05 4 in your report?

10:05 5 MR. FIGEL: Objection.

10:05 6 A. I can't say they were the only reasonable
10:05 7 way. They were the way I thought would be
10:06 8 illuminating with respect to the questions that I was
10:06 9 trying to answer.

10:06 10 Q. So I take it, then, that certain of the
10:06 11 contracts could fall into a category that you did not
10:06 12 identify in your report?

10:06 13 MR. FIGEL: Objection.

10:06 14 A. Well, it's certainly possible. But if you
10:06 15 look at my report, they were forming categories and
10:06 16 then a whole bunch of miscellaneous contracts. So I
10:06 17 would not imagine that there would be much that would
10:06 18 be missing, but I can't say that there would be
10:06 19 nothing missing.

10:06 20 Q. Could another expert in the field of
10:06 21 contract law reasonably come up with different
10:06 22 categories?

10:06 23 MR. FIGEL: Objection.

10:06 24 A. You know, of course, there's that
10:06 25 possibility. But if you were a contracts expert and

10:06 1 interested in the questions that I was interested in,
10:06 2 it would be difficult for me to think that you would
10:06 3 come up with anything very differently from what I
10:07 4 came up with.

10:07 5 Q. Could Judge Torres come up with different
10:07 6 reasonable ways to categorize the contracts?

10:07 7 MR. FIGEL: Objection.

10:07 8 A. I don't know.

10:07 9 Q. Do you know who Judge Torres is?

10:07 10 A. Not offhand.

10:07 11 Q. The Article III judge in this lawsuit.

10:07 12 A. I don't know what Judge Torres did.

10:07 13 Q. Is there any reason why Judge Torres is not
10:07 14 qualified to interpret the contracts cited in your
10:07 15 report?

10:07 16 MR. FIGEL: Objection.

10:07 17 A. I don't know anything in particular about
10:07 18 Judge Torres.

10:07 19 Q. What was your methodology for selecting the
10:07 20 categories and the criteria?

10:07 21 A. As I said before, I was interested in
10:07 22 whether Ripple had obligated itself to perform
10:08 23 services post sale for the buyers of XRP, so I looked
10:08 24 for contracts in which such obligations might appear.

10:08 25 So, for example, they would or would not

10:08 1 appear in a direct sales contract, and certain of the
10:08 2 contracts in which Ripple was a buyer of services
10:08 3 with another company, there might be a possibility
10:08 4 that there was a term in a contract like that that
10:08 5 would make an XRP buyer a third-party beneficiary, so
10:08 6 I looked at the service contracts to see whether such
10:08 7 a -- there were language that might support such an
10:08 8 inference.

10:08 9 I looked -- there were -- Ripple sold -- I
10:08 10 mean, there's a question I had, was whether Ripple
10:09 11 made only discrete sales of particular things or
10:09 12 whether they sold them in a way that is sometimes
10:09 13 customary where you make an agreement with a buyer
10:09 14 that from time to time, the buyer will submit orders,
10:09 15 and the terms of those orders will be the ones of the
10:09 16 master agreement. So I was interested in whether
10:09 17 there were any contracts like that.

10:09 18 Q. And -- and I'm sorry, because I'm -- I'm
10:09 19 not sure we're on the same page for -- for this
10:09 20 question.

10:09 21 I'm not talking about the different
10:09 22 features of the contracts, like a -- post obligations
10:09 23 or anything like that. Just the -- basically the
10:09 24 categories you cite in your report, direct sales
10:09 25 contract, wholesale contract, programmatic contract,

10:09 1 loans, employee compensation, those categories. What
10:09 2 was your --

10:09 3 MR. FIGEL: Objection. Can I have just a
10:09 4 moment, Mr. Hanauer?

10:09 5 MR. HANAUER: I just want to make sure I'm
10:09 6 seeing the question.

10:09 7 MR. FIGEL: Well, you interrupted an answer
10:10 8 to the question, What was your methodology for
10:10 9 selecting the categories in, and the criteria. And
10:10 10 he was giving an answer as to his -- the methodology
10:10 11 that he was giving.

10:10 12 And then you interrupted him and said what
10:10 13 you just said, which is, I'm not talking about the
10:10 14 different features of the contracts. So I don't -- I
10:10 15 just want to make sure the witness has had an
10:10 16 opportunity to finish his answer with respect to the
10:10 17 methodology, which was the question that you posed.

10:10 18 A. I was -- I thought I had answered that. I
10:10 19 was looking for contract types which might contain
10:10 20 terms that would create a contractual expectation on
10:10 21 the part of a buyer of XRP. Those provisions could
10:11 22 appear in various kinds of contracts, so I was
10:11 23 interested in what kinds of contracts there were.

10:11 24 Q. I guess my question was -- or my question
10:11 25 now is, the categories you've identified, direct

10:11 1 sales, programmatic, wholesale, employee
10:11 2 compensation, what was your methodology for coming up
10:11 3 with those general categories, selecting those
10:11 4 general categories?

10:11 5 A. I think I've answered that question. I
10:11 6 didn't have -- because I'm not sure what -- what you
10:11 7 mean in your question by a methodology.

10:11 8 I -- the overarching question that I was
10:11 9 trying to address was whether there was language in
10:11 10 contracts that Ripple used that would sustain the
10:11 11 particular inference, and I was interested in the
10:11 12 various kinds of contracts that might contain such
10:12 13 language.

10:12 14 Q. And you split up those various kinds of
10:12 15 contracts into categories such as direct sales,
10:12 16 programmatic sales, loans?

10:12 17 A. Right. Yeah, there were -- yeah, there
10:12 18 were -- I think that's right.

10:12 19 Q. So I guess what I'm trying to get at is,
10:12 20 you testified that you came up with the categories
10:12 21 after only reviewing a small amount of contracts, and
10:12 22 I guess, what was the methodology of deciding those
10:12 23 categories that you relayed to counsel and instructed
10:12 24 them on how to list in the appendix? What was your
10:12 25 methodology, you know, of coming up with these

10:12 1 categories before you started your more thorough
10:12 2 review of the contracts?

10:12 3 MR. FIGEL: Objection.

10:12 4 A. Well, it would be were there contracts of
10:13 5 Type A, were there contracts of Type B, were there
10:13 6 contracts of Type C.

10:13 7 Q. And what was your methodology in coming up
10:13 8 with Type A, Type B, Type C?

10:13 9 A. Well, for example, although I think I've
10:13 10 answered this, if Type A is a direct sales contract,
10:13 11 then I wanted to see a direct sales contract because
10:13 12 you might find a commitment to buyers in a direct
10:13 13 sales contract.

10:13 14 If it was a service contract, you might
10:13 15 find third-party beneficiary language in a service
10:13 16 contract.

10:13 17 The overarching question I was trying to
10:13 18 answer was whether there was -- there were terms or
10:13 19 phrases in any of these contracts that can sus--
10:13 20 could sustain an inference that Ripple assumed
10:14 21 post-sale obligations toward buyers.

10:14 22 I really don't have anything else to say to
10:14 23 that, because I just asked for what -- is there a
10:14 24 contract like this, is there a contract like that.

10:14 25 Q. And -- and I guess that's what I'm getting

10:14 1 at. When you -- when you relayed to counsel, said,
10:14 2 Are there direct sales contracts, are there service
10:14 3 contracts, are there loan contracts, what was your
10:14 4 methodology in choosing those various categories that
10:14 5 you asked counsel to find for you?

10:14 6 MR. FIGEL: Objection.

10:14 7 A. Because the -- contracts of that type might
10:14 8 or might not contain the language that I was
10:14 9 interested in.

10:14 10 Q. How did you go about choosing those
10:14 11 specific types?

10:14 12 A. I'm not sure I have more to say about that.
10:14 13 I mean, it might be -- I mean, there was some
10:14 14 back-and-forth in the sense of -- in the course of
10:14 15 discussions in which I said I wanted to see contracts
10:14 16 in various categories, I don't have a direct
10:15 17 recollection, but it wouldn't surprise me if somebody
10:15 18 said, Well, you know they were loans. If anybody
10:15 19 said that to me, I'd say, Well, let me see those.

10:15 20 Q. Did you ask to review any representations
10:15 21 beyond the four corners of a contract?

10:15 22 A. No.

10:15 23 Q. Why not?

10:15 24 A. Because the question that was addressed --
10:15 25 the question that was -- that I was retained to

10:15 1 answer was whether there were contractual obligations
10:15 2 created, which I sought to answer by looking at the
10:15 3 contracts.

10:15 4 Q. Was any documentation provided to you
10:15 5 showing the work that went into the preparation of
10:15 6 Exhibits C to F of your report?

10:16 7 A. No.

10:16 8 MR. FIGEL: Objection.

10:16 9 A. No.

10:16 10 Q. How are you doing on time? We've been
10:16 11 going a little bit more than an hour and may be
10:16 12 logical.

10:16 13 A. Maybe another half hour, and then I'll want
10:16 14 to do pushups.

10:16 15 MR. HANAUER: That's fine.

10:16 16 MR. FIGEL: That was not the answer I was
10:16 17 hoping for. Does anybody else need a break?

10:16 18 THE WITNESS: Well, we can do a break now.
10:16 19 It's okay, I don't care.

10:16 20 MR. FIGEL: It's up -- it's up to you.

10:16 21 THE WITNESS: I don't mind going for a
10:16 22 little while longer.

10:16 23 MR. FIGEL: All right. Well, you're the
10:16 24 guy that matters, so we're going to keep going.
10:16 25 Okay. But whenever you -- whenever you need one,

10:16 1 just let me know, okay?

10:16 2 THE WITNESS: Well -- yeah, we've been
10:16 3 doing an hour. Maybe a little bit more.

10:16 4 Q. Okay. So in your report you reference the
10:16 5 Supreme Court's decision in SEC versus
10:16 6 W.J. Howey Company?

10:16 7 A. Yes.

10:16 8 Q. You reviewed the Supreme Court's decision
10:16 9 in Howey before preparing your report?

10:16 10 A. Yes.

10:16 11 Q. Do you consider yourself an expert on how
10:16 12 courts have applied that decision?

10:17 13 A. I don't know that anyone would be an expert
10:17 14 in how a court applied a particular decision. I have
10:17 15 read some post Howey cases.

10:17 16 Q. Did you consider any of the post Howey
10:17 17 cases in preparing your report?

10:17 18 A. No, I did not.

10:17 19 Q. Have courts provided more recent guidance
10:17 20 since the Supreme Court's Howey decision on how to
10:17 21 determine if transactions involve the offer or sale
10:17 22 of an investment contract?

10:17 23 MR. FIGEL: Objection.

10:17 24 A. I've read some cases, but I haven't --
10:17 25 there -- I am told that there are hundreds of cases

10:17 1 that apply Howey. I have not read hundreds of cases.

10:18 2 Q. In forming your opinions, did you consider
10:18 3 any court cases applying Howey?

10:18 4 A. In forming my report, no.

10:18 5 Q. And in forming your opinions, did you
10:18 6 consider the features of any contracts in cases
10:18 7 applying Howey to see how the court analyzed those
10:18 8 contracts to see if the financial instruments were
10:18 9 investment contracts?

10:18 10 MR. FIGEL: Objection.

10:18 11 A. Not in preparing my report.

10:18 12 Q. In addition to reviewing the Supreme
10:18 13 Court's Howey decision, you also reviewed the lower
10:18 14 courts' opinions in the Howey litigation?

10:19 15 A. Yes.

10:19 16 Q. And you also read the transcript of record
10:19 17 before the Supreme Court?

10:19 18 A. Yes.

10:19 19 Q. Did you review all 134 pages of that
10:19 20 transcript of record?

10:19 21 A. Yes.

10:19 22 Q. How did you obtain it?

10:19 23 A. I don't recall. I -- I either got it from
10:19 24 my library, or the lawyers gave it to me. I don't
10:19 25 recall how I came about getting it.

10:19 1 Q. And when I say Howey, I'm going to refer to
10:19 2 the Supreme Court's decision.

10:19 3 A. Right.

10:19 4 Q. Okay.

10:19 5 Howey involved two common law contracts.

10:19 6 A. Howey just involved two contracts. I don't
10:19 7 know what common law adds to that description.

10:19 8 Q. That's fair. Howey involved a land sale
10:19 9 contract and a service contract?

10:19 10 A. Yes.

10:19 11 Q. And you reviewed both of those contracts?

10:20 12 A. Yes. They were in the record, so I...

10:20 13 MR. HANAUER: Exhibit 5.

10:20 14 MS. WAXMAN: Sorry.

10:20 15 THE WITNESS: A lot of paper in this case.

10:20 16 MR. FIGEL: Do you want me to give him --

10:20 17 MR. HANAUER: Yeah, the witness should have
10:20 18 one.

10:20 19 MR. FIGEL: Okay, that's fine. He should
10:20 20 have one, yes, I was just not sure about which one.

10:20 21 (Transcript of Howey litigation was marked
10:20 22 Exhibit AS-5 for identification, as of this
10:20 23 date.)

10:20 24 Q. So I just tendered you Exhibit 5. Is
10:20 25 Exhibit 5 a copy of the Howey transcript of record

10:21 1 that you reviewed?

10:21 2 A. It seems to be.

10:21 3 Q. And the two contracts at issue in Howey
10:21 4 that you reviewed, those are reflected on pages 11 to
10:21 5 20 of Exhibit 5?

10:21 6 A. Yes.

10:21 7 (Witness reviewing document.)

10:21 8 A. Yes.

10:21 9 Q. And Exhibit 5 also contains stipulated
10:21 10 facts that the Supreme Court considered in deciding
10:21 11 Howey?

10:21 12 A. Yes.

10:21 13 Q. And that's on pages 5 to 11?

10:22 14 A. Yes.

10:22 15 Q. And you reviewed those stipulated facts?

10:22 16 A. Once.

10:22 17 Q. Is it your understanding that in addition
10:22 18 to -- so let me take a step back.

10:22 19 So the two contracts at issue in Howey were
10:22 20 a land sale contract and a services contract?

10:22 21 A. Yes.

10:22 22 Q. In addition to receiving the land sales
10:22 23 contract and the services contract, the investors in
10:22 24 the Howey case, they also received a sales talk from
10:22 25 representatives of the companies selling those

10:22 1 contracts?

10:22 2 MR. FIGEL: Objection.

10:22 3 A. I think they did. I think this is in the
10:22 4 record.

10:22 5 Q. And that sales talk is included on pages 20
10:22 6 to 28 of Exhibit 5?

10:22 7 A. I don't recall the pages, but --

10:23 8 (Witness reviewing document.)

10:23 9 A. That seems to be correct.

10:23 10 Q. Just for your reference, on pages 8 to 9 of
10:23 11 Exhibit 5, in paragraph 12 it says, Attached hereto
10:23 12 in a part hereof, as Exhibit B 1, is a typical sales
10:23 13 talk employed by representatives as acting for the
10:23 14 two companies in effectuating sales.

10:23 15 A. Yes.

10:23 16 Q. And that's the same sales talk I just asked
10:23 17 you about?

10:23 18 A. It seems to be, yes.

10:23 19 Q. And you reviewed the sales talk in
10:23 20 preparing your report?

10:23 21 A. I read everything here.

10:24 22 Q. In Exhibit 5?

10:24 23 A. Yes.

10:24 24 Q. In determining whether an investment
10:24 25 contract existed in Howey, did the Supreme Court look

10:24 1 at the two contracts, the land sales contract and the
10:24 2 services contract, in isolation; or did the Supreme
10:24 3 Court consider them together?

10:24 4 MR. FIGEL: Objection.

10:24 5 A. I think the court collapsed the two into
10:24 6 one.

10:24 7 Q. And is that one of the lessons from Howey,
10:24 8 that if multiple contracts govern a commercial
10:24 9 relationship, those multiple contracts should be
10:24 10 considered together to determine if an investment
10:24 11 contract exists under the federal securities laws?

10:24 12 MR. FIGEL: Objection.

10:24 13 A. I'm not offering an opinion on whether
10:24 14 something is or isn't an investment contract.

10:24 15 Q. And when you say "investment contract," do
10:24 16 you mean investment contract as that term is
10:25 17 construed under the federal securities laws?

10:25 18 A. Yes.

10:25 19 Q. And going forward, if I use the term
10:25 20 "investment contract," will you understand that I'm
10:25 21 referencing that term as it's used under the federal
10:25 22 securities laws?

10:25 23 A. Yes, so long as you understand that I'm not
10:25 24 giving an opinion on that issue.

10:25 25 Q. That should make our time here a lot of

10:25 1 shorter.

10:25 2 A. Good.

10:25 3 Q. Are you offering an opinion on whether or
10:25 4 not the sales talk the investors received was a
10:25 5 component of the investment contract the Court in
10:25 6 Howey found exists?

10:25 7 MR. FIGEL: Objection.

10:25 8 A. The contracts speak for themselves; that
10:25 9 is, the contracts create obligations and duties.

10:25 10 Q. But my question is, when determining
10:26 11 whether an investment contract exists, was the Court
10:26 12 just looking at the land sales and services contract
10:26 13 or was it looking also at the sales talk?

10:26 14 MR. FIGEL: Objection.

10:26 15 A. I assume the Court read the record.

10:26 16 Q. Can I refer you now to your report, page 7,
10:26 17 paragraph 10.

10:26 18 I want to refer you to the first full
10:26 19 sentence on paragraph 7.

10:26 20 A. Uh-huh.

10:27 21 Q. Do you see -- what do you mean when you
10:27 22 write, In the commercial circumstances?

10:27 23 MR. FIGEL: Objection.

10:27 24 That's not what it says.

10:27 25 A. Yes.

10:27 1 It's -- it says what it says, if you have a
10:27 2 question about it.

10:27 3 Q. That's what I tried to ask. What did
10:27 4 you -- what did you mean when you write, In the
10:27 5 commercial circumstances?

10:27 6 A. I didn't. I wrote, The commercial context,
10:27 7 or -- in paren, or economic substance, closed paren.

10:27 8 Q. I just want to make sure we're on -- this
10:27 9 is the top of page 7.

10:27 10 A. Oh.

10:27 11 Well, I am -- you said paragraph 10. Are
10:27 12 you referring to anything --

10:27 13 Q. Yeah. Paragraph 10 spills over from page 6
10:27 14 into page 7. I apologize for not trying to get you
10:28 15 there.

10:28 16 Top of page 7, the first full sentence.

10:28 17 A. Well, the first full sentence begins, The
10:28 18 two contracts in Howey considered together.

10:28 19 Is that the sentence you're --

10:28 20 Q. Yes. Yes, sir. I'm asking you, when you
10:28 21 write, Considered together in the commercial
10:28 22 circumstances, what do you mean by "commercial
10:28 23 circumstances"?

10:28 24 A. That they were selling orange groves.

10:28 25 Q. Were the two contracts in Howey the only

10:28 1 factual basis for providing the investors the
10:28 2 prospect of an investment return?

10:28 3 MR. FIGEL: Objection.

10:28 4 A. If you're asking me what the investors were
10:28 5 thinking or what they relied upon, that's beyond the
10:28 6 scope of my report.

10:28 7 Q. I'm asking you what they were told.

10:29 8 MR. FIGEL: Objection.

10:29 9 A. What they were told is in the record.

10:29 10 Q. Right. So my question is, is the only
10:29 11 factual -- so in Howey, the investors were led to
10:29 12 expect returns on their investment. Correct?

10:29 13 A. Yeah. Everybody who makes an investment
10:29 14 anticipates a return.

10:29 15 I mean, they weren't doing it for nothing.

10:29 16 Q. And what I'm asking is, the only factual
10:29 17 basis that the investors received to expect that
10:29 18 return, was it just the two contracts?

10:29 19 MR. FIGEL: Objection.

10:29 20 A. No. The investors thought they were making
10:29 21 an investment in orange groves. Whatever went into
10:29 22 that determination on the part of the investors is
10:29 23 what they considered.

10:29 24 Q. But what was told them that would create an
10:30 25 expectation that they would profit?

10:30 1 MR. FIGEL: Objection.

10:30 2 A. I don't know what was told them. But I
10:30 3 assume that they received a sales talk which would be
10:30 4 similar to the one in the record.

10:30 5 Q. And in that sales talk, the investors were
10:30 6 told to expect profits from their investment?

10:30 7 A. I think the investors were told that this
10:30 8 would be a good investment, which is what sellers
10:30 9 tell buyers.

10:31 10 Q. Is it your understanding of Howey that one
10:31 11 requisite element to find an investment contract is
10:31 12 an expectation of profit by the investor?

10:31 13 MR. FIGEL: Objection.

10:31 14 A. If by "investment contract," you mean
10:31 15 something under the securities laws, I'm not
10:31 16 testifying to what elements add up to what a
10:31 17 securities law conclusion would be.

10:31 18 Q. What provision of the land sales contract
10:31 19 or the services contract in Howey led investors to
10:31 20 expect substantial profits?

10:31 21 MR. FIGEL: Objection.

10:31 22 A. I don't know what led investors to expect
10:31 23 whatever the investors expected.

10:31 24 Q. What from the land sales or the services
10:31 25 contract did the Supreme Court find gave investors an

10:32 1 expectation of substantial profit?

10:32 2 A. I don't think the Supreme Court said that.
10:32 3 I think the Supreme Court said that the return
10:32 4 that -- that the inventors could not realize a return
10:32 5 except for -- or at least importantly, for the
10:32 6 efforts of the Howey Company.

10:32 7 MR. HANAUER: Daphna, could we do
10:32 8 Exhibit 4.

10:32 9 THE WITNESS: If we're going to talk about
10:32 10 this, I -- this would be good time for me to take a
10:32 11 break, if that would be okay.

10:32 12 MR. HANAUER: Perfect.

10:32 13 THE VIDEOGRAPHER: Going off the record.
10:32 14 The time is 10:34.

10:33 15 (A recess was taken from 10:34 to 10:48.)

10:47 16 THE VIDEOGRAPHER: Going back on the
10:47 17 record. The time is 10:48.

10:47 18 Q. Professor Schwartz, do you have Exhibit 4
10:47 19 in front of you?

10:47 20 A. I do.

10:47 21 (Supreme Court's Decision in Securities and
10:47 22 Exchange Commission v. W.J. Howey Co., et al.,
10:47 23 was marked Exhibit AS-4 for identification, as
10:47 24 of this date.)

10:47 25 Q. And Exhibit 4, that's a copy of the Supreme

10:47 1 Court's decision in Howey that you reviewed?

10:47 2 A. Yes.

10:47 3 Q. I would like to refer you to the -- page 3
10:47 4 of the exhibit, the paragraph that starts with, 7
10:47 5 after 4 stars.

10:47 6 The one that begins, The purchasers, for
10:47 7 the most part, are nonresidents of Florida.

10:47 8 A. Yes.

10:47 9 Q. And then do you see a little bit further in
10:47 10 the paragraph, it says, they are attracted by the
10:47 11 expectation of substantial profits. It was
10:47 12 represented, for example, that profits during the
10:47 13 1943-1944 season amounted to 20 percent and that even
10:48 14 greater profits might be expected during the 1944 to
10:48 15 1945 season?

10:48 16 A. I do.

10:48 17 Q. Were those representations about
10:48 18 substantial profits, were those contained in the land
10:48 19 sales contract?

10:48 20 A. No.

10:48 21 Q. Were they contained in the services
10:48 22 contract?

10:48 23 A. No.

10:48 24 Q. They were in the sales talk, though.

10:48 25 A. Yes.

10:48 1 Q. Did any of the contracts in Howey give the
10:48 2 buyer a right to share in the profits of any company?

10:48 3 MR. FIGEL: Objection.

10:48 4 A. Yeah. I think they were entitled to share
10:48 5 in the profits from the sale of oranges.

10:49 6 Q. Did any of the contracts give the buyer a
10:49 7 right to share in the profits of W.J. Howey Co. --
10:49 8 Company?

10:49 9 A. No.

10:49 10 Q. What about Howey-in-the-Hills Service,
10:49 11 Inc.?

10:49 12 A. I don't think so.

10:49 13 Q. Did any of the contracts in Howey give the
10:49 14 buyer voting rights in any company?

10:49 15 A. No.

10:49 16 Q. Did any of the contracts in Howey give the
10:49 17 buyer the rights to dividends for any company?

10:49 18 MR. FIGEL: Objection.

10:49 19 A. "Dividend" is a term of art. If by
10:49 20 "dividends" you mean payouts a corporation makes to
10:49 21 shareholders, the answer would be no.

10:49 22 Q. Are you offering an opinion on whether any
10:49 23 of Ripple's actions affected the value of XRP or
10:49 24 resulted in profits to XRP purchasers?

10:50 25 A. No.

10:50 1 Q. Are you offering any opinion whether
10:50 2 something affected or impacted the price of XRP?

10:50 3 MR. FIGEL: Objection.

10:50 4 A. No.

10:50 5 Q. I'd like you to look at your report,
10:50 6 paragraph 11.

10:50 7 A. Okay.

10:50 8 Q. And do you see the sentence that says, I
10:50 9 was not able to identify a single contract that
10:50 10 included an express provision that obligated Ripple
10:50 11 to perform post-sale duties that could affect the
10:50 12 value of XRP or return profits to any person?

10:51 13 A. Yes.

10:51 14 Q. In your opinion, is an express provision
10:51 15 that obligates Ripple to perform post-sale duties
10:51 16 that could affect the value of XRP or return profits
10:51 17 to any person required to establish the existence of
10:51 18 an investment contract under the federal securities
10:51 19 laws?

10:51 20 A. I have --

10:51 21 MR. FIGEL: Objection.

10:51 22 A. -- no opinion on what would or would not
10:51 23 constitute an investment contract under the
10:51 24 securities laws.

10:51 25 Q. And I'm just -- if you bear with me, I'm

10:51 1 going to ask you a series of fairly similar questions
10:51 2 that hopefully will save us a very significant amount
10:51 3 of time.

10:51 4 Are you offering the opinion that the
10:51 5 presence of any contractual provision or type of
10:51 6 contractual provision is required to establish the
10:51 7 existence of an investment contract under the federal
10:52 8 securities laws?

10:52 9 A. No.

10:52 10 MR. FIGEL: Objection.

10:52 11 Q. Are you offering the opinion that the
10:52 12 absence of any contractual provision or type of
10:52 13 contractual provision is required to establish the
10:52 14 existence of an investment contract under the federal
10:52 15 securities laws?

10:52 16 MR. FIGEL: Objection.

10:52 17 A. No.

10:52 18 Q. Are you offering the opinion that the
10:52 19 presence of any combination of contractual provisions
10:52 20 is required to establish the existence of an
10:52 21 investment contract?

10:52 22 MR. FIGEL: Objection.

10:52 23 A. No.

10:52 24 Q. Are you offering the opinion that the
10:52 25 presence of any combination of contractual provisions

10:52 1 precludes the existence of an investment contract?

10:52 2 MR. FIGEL: Objection.

10:52 3 A. No.

10:52 4 Q. Are you offering the opinion that the
10:52 5 presence of any contractual provision or type of
10:52 6 contractual provision precludes the existence of an
10:52 7 investment contract?

10:52 8 MR. FIGEL: Objection.

10:52 9 A. No.

10:52 10 Q. Are you offering the opinion that the
10:52 11 absence of any contractual provision or type of
10:53 12 contractual provision precludes the existence of an
10:53 13 investment contract under the federal securities
10:53 14 laws?

10:53 15 A. No.

10:53 16 Q. Did Ripple sell XRP only to people who
10:53 17 intended to use XRP for non-investment purposes?

10:53 18 MR. FIGEL: Objection.

10:53 19 A. I don't know the answer to that question.

10:53 20 That is, I'm -- I'm saying that I don't
10:53 21 know what any particular buyers intended.

10:54 22 Q. Did the contracts in Howey suggest an
10:54 23 intention to convey third-party rights?

10:54 24 A. I don't recall any language in those
10:54 25 contracts that would support that conclusion.

10:54 1 Q. In your report, you talk about Ripple's
10:54 2 business model.

10:54 3 Is that accurate?

10:54 4 A. I don't recall where in my report I said
10:54 5 that, but if I --

10:54 6 Q. Page 8. The last full paragraph of -- the
10:54 7 last full sen -- I'm sorry. Page 8, the last full
10:54 8 paragraph of paragraph 12.

10:54 9 A. I see that.

10:54 10 Q. So what is Ripple's business model?

10:54 11 A. That they create and sell cryptocurrency to
10:55 12 buyers and -- that's the story. They create it and
10:55 13 sell it.

10:55 14 Q. So Ripple created XRP.

10:55 15 A. Yeah, and they sell it.

10:55 16 Q. Are you aware that the vast majority of
10:55 17 Ripple's revenues come from selling XRP?

10:55 18 A. I don't know where their revenues come
10:55 19 from.

10:55 20 Q. Well, you just said their business model
10:55 21 was selling XRP.

10:55 22 A. What I said was that their business model
10:55 23 doesn't require them to be a member of a network. In
10:55 24 a variety of industries, networks are requisite to
10:55 25 how the industry functions. Ripple essentially

10:56 1 functions on its own.

10:56 2 Q. You write in your report that, Ripple's
10:56 3 return does not depend on or confer any rights in a
10:56 4 third party.

10:56 5 Do you see that?

10:56 6 A. I see it.

10:56 7 Q. What do you mean by that?

10:56 8 A. What I mean by that is so far as I can
10:56 9 tell, their return comes -- primarily comes from
10:56 10 selling XRP.

10:56 11 Q. So when you say a third party, is someone
10:56 12 who purchases Ripple -- or is someone that purchases
10:56 13 XRP from Ripple a third party?

10:56 14 A. No.

10:57 15 Q. So, when you mean a third party, you mean
10:57 16 someone other than Ripple or the person or entity
10:57 17 that purchases XRP?

10:57 18 A. There are industries in which there are
10:57 19 people in a network, or several parties get together
10:57 20 in a joint or common venture. All I meant here was
10:57 21 that Ripple is just the maker and seller of a
10:57 22 product.

10:57 23 Q. Are you offering an opinion whether
10:57 24 Ripple's products affected the price of XRP?

10:57 25 A. No.

10:57 1 MS. PROSTKO: Objection.

10:57 2 Q. Are you offering an opinion on how the
10:57 3 liquidity of XRP affects its price?

10:57 4 MR. FIGEL: Objection.

10:57 5 A. I'm not offering an opinion on that.

10:58 6 MS. PROSTKO: Sorry to interrupt,
10:58 7 interject. I had an objection at the same time the
10:58 8 answer was being given to the question about the --
10:58 9 are you offering an opinion about whether Ripple's
10:58 10 efforts affected the price of XRP, and I don't see
10:58 11 that noted on the rough transcript.

10:58 12 MR. FIGEL: 57:52.

10:58 13 Q. Are you offering an opinion on whether uses
10:58 14 other than trading for investment purposes existed
10:58 15 for XRP?

10:58 16 MR. FIGEL: Objection.

10:58 17 A. No, I don't think so.

10:58 18 If it's not in my report, I don't -- I'm
10:58 19 not offering an opinion on it.

10:58 20 Q. Does your report rest on the assumption
10:58 21 that there were uses for XRP, other than trading for
10:59 22 investment purposes?

10:59 23 MR. FIGEL: Objection.

10:59 24 A. No.

10:59 25 Q. Can you please look at paragraph 13 of your

10:59 1 report.

10:59 2 And then I want to refer you to the first
10:59 3 full sentence on page 9.

10:59 4 A. Uh-huh.

10:59 5 Q. It says, Rather, Ripple's promotional
10:59 6 actions are typical of the actions of most merchants
10:59 7 who are concerned with the aftermarket for the
10:59 8 products they sell?

10:59 9 A. Yes.

10:59 10 Q. What are Ripple's promotional actions that
10:59 11 you described?

11:00 12 A. The ones I observed in the SI-- SEC's
11:00 13 complaint.

11:00 14 Q. Anything else?

11:00 15 A. No.

11:00 16 Q. In forming your opinions, did you consider
11:00 17 how Ripple's promotional actions compare to the
11:00 18 promotional actions of firms offering and selling
11:00 19 securities to investors?

11:00 20 A. No.

11:00 21 Q. Do you see how, on page 9 of your report,
11:01 22 you reference De Beers, Rolex, and BMW?

11:01 23 A. Yes.

11:01 24 Q. Where did those examples come from?

11:01 25 A. My knowledge of the world.

11:01 1 Q. Did --

11:01 2 A. Well, also, I own a Rolex and a BMW.

11:01 3 But I don't own any diamonds.

11:01 4 Q. Did you come up with the De Beers example
11:01 5 on your own?

11:01 6 A. Yes.

11:01 7 Q. And if I told you that the example of
11:01 8 De Beers was listed in another expert report, would
11:01 9 you have any knowledge of that?

11:01 10 A. No.

11:01 11 Q. Does De Beers own and control the majority
11:01 12 of diamonds in existence?

11:01 13 MR. FIGEL: Objection.

11:01 14 A. I don't know De Beers' market share.

11:01 15 Q. Do you have any reason to believe that
11:01 16 De Beers owns and controls the majority of diamonds
11:02 17 in existence?

11:02 18 A. As I said, I don't know their market share.
11:02 19 I know that they control a lot of diamonds.

11:02 20 Q. Does Rolex own and control the majority of
11:02 21 Rolex watches in existence?

11:02 22 MR. FIGEL: Objection.

11:02 23 A. Well, they don't control the aftermarket in
11:02 24 them.

11:02 25 Q. And I guess that's my question, are there

11:02 1 more -- for using the Rolex example, are there more
11:02 2 Rolex sitting in Rolex's inventory or sitting in the
11:02 3 collection with people that purchase Rolexes?

11:02 4 MR. FIGEL: Objection.

11:02 5 A. I don't know the answer to that question.

11:02 6 Q. And -- and it's the same question for
11:02 7 De Beers; who has more diamonds, De Beers in its
11:02 8 inventory, or all the other people in the world who
11:02 9 own diamonds put together?

11:02 10 MR. FIGEL: Objection.

11:02 11 A. As a matter of fact, I don't know the
11:03 12 relevant proportions. People have been buying
11:03 13 diamonds for hundreds of years, so I would assume, if
11:03 14 I'm going to assume anything, that there are probably
11:03 15 more diamonds out there than the ones that De Beers
11:03 16 owns, but if you're asking me for a fact answer, I
11:03 17 don't know for a fact what any proportions are.

11:03 18 Q. What -- what about for BMW? Does BMW own
11:03 19 the majority of BMW cars in existence?

11:03 20 MR. FIGEL: Objection.

11:03 21 A. No.

11:03 22 Q. Does Ripple own and control the majority of
11:03 23 XRP in existence?

11:03 24 MR. FIGEL: Objection.

11:03 25 A. I don't know the answer to that.

11:03 1 Q. Are you familiar with the concept of
11:03 2 fiduciary duties owed by a company's management to
11:03 3 its owners?

11:03 4 A. Yes.

11:03 5 Q. Okay. What does that concept mean to you?

11:03 6 A. Well, if the owners are shareholders, the
11:03 7 manager's own duties of loyalty, care, and good faith
11:04 8 to the shareholders.

11:04 9 And those are fiduciary duties.

11:04 10 Q. Did Ripple owe fiduciary duties to its
11:04 11 equity shareholders?

11:04 12 MR. FIGEL: Objection.

11:04 13 A. I don't know Ripple's corporate setup. If
11:04 14 it was a corp-- a typical corporate setup, then the
11:04 15 answer would be yes, but I don't know for a fact what
11:04 16 their corporate setup is.

11:04 17 Q. Do you know if Ripple has equity
11:04 18 shareholders?

11:04 19 A. No.

11:04 20 Q. Let's assume that Ripple did have or does
11:04 21 have equity shareholders.

11:04 22 If -- assuming that's the case, would
11:04 23 Ripple owe fiduciary duties to its equity
11:04 24 shareholders to increase the value of Ripple's
11:04 25 shares?

11:04 1 MR. FIGEL: Objection.

11:04 2 A. No.

11:05 3 Q. Why do you say that?

11:05 4 A. Well, you're asking me about fiduciary
11:05 5 duties. The fiduciary duties are to manage
11:05 6 carefully, to avoid conflicts of interest, to make
11:05 7 appropriate disclosures.

11:05 8 Companies don't promise shareholders --
11:05 9 usually don't promise shareholders returns.

11:05 10 Q. I'm not asking about the promise of
11:05 11 returns. But does management have a fiduciary duty
11:05 12 to make good-faith efforts to increase the value of
11:05 13 the company?

11:05 14 MR. FIGEL: Objection.

11:05 15 A. No, they don't have a fiduciary duty as
11:05 16 fiduciary duties are technically defined in corporate
11:05 17 law. They have a contractual obligation, implicit in
11:05 18 the share contract, to manage in the best interest of
11:06 19 their shareholders.

11:06 20 THE WITNESS: Did anybody else hear that?
11:06 21 I hope so.

11:06 22 Q. And the obligation of management to act in
11:06 23 the best interests of a company's shareholders, does
11:06 24 that include the obligation to increase the value of
11:06 25 the company's shares?

11:06 1 MR. FIGEL: Objection.

11:06 2 A. Managers want to maximize share value.

11:06 3 Q. Does that include an obligation to use
11:06 4 good-faith efforts to grow the value of the company's
11:06 5 assets?

11:06 6 MR. FIGEL: Objection.

11:06 7 A. Those are legal terms. I -- there's --
11:07 8 shareholder of a company doesn't have a right to any
11:07 9 particular level of effort on behalf of the managers.
11:07 10 That's why you write contracts with managers to
11:07 11 incentivize them.

11:07 12 Q. And again, are you offering an opinion
11:07 13 about the expectations of any purchaser or holder of
11:07 14 XRP?

11:07 15 A. No.

11:07 16 Q. So going back to your report, paragraph 9,
11:08 17 do you see the sentence two-thirds of the way down
11:08 18 that begins, Ripple presumably also seeks to protect
11:08 19 the after-sale value of XRP for its own benefit?

11:08 20 A. Paragraph?

11:08 21 Q. Page 9.

11:08 22 A. Oh, page 9.

11:08 23 MR. FIGEL: Do you mind if I point it out
11:08 24 to him?

11:08 25 MR. HANAUER: Yeah, of course.

11:08 1 MR. FIGEL: Beginning with "Ripple."

11:08 2 THE WITNESS: Yeah.

11:08 3 (Witness reviewing document.)

11:08 4 Q. Did you have a chance to review that
11:08 5 sentence?

11:08 6 A. Yes, I have.

11:08 7 Q. What do you mean by, Protect the after-sale
11:08 8 value of XRP?

11:09 9 A. That XRP would not fall materially in
11:09 10 value.

11:09 11 Q. What steps did Ripple take to protect the
11:09 12 after-sale value of XRP?

11:09 13 MR. FIGEL: Objection.

11:09 14 A. I don't know.

11:09 15 Q. You don't know?

11:09 16 A. Well, other than what I read in the SEC
11:09 17 report, my language in -- my expert report uses the
11:09 18 word "presumably."

11:09 19 Q. And why would Ripple take steps to protect
11:09 20 the after-sale value of XRP?

11:09 21 MR. FIGEL: Objection.

11:09 22 A. You could be asking me one of two
11:09 23 questions. One question you can be asking me is,
11:09 24 What is the subjective intention of the people who
11:09 25 run Ripple?

11:09 1 I have no idea what that would be.

11:10 2 If you're asking me whether someone who
11:10 3 sells a product that has an aftermarket wants to
11:10 4 protect the aftermarket, the answer would be yes.

11:10 5 Q. Why would Ripple presumably want to
11:10 6 protect -- strike that.

11:10 7 Why would Ripple want to prevent the price
11:10 8 of XRP from declining materially?

11:10 9 MR. FIGEL: Objection.

11:10 10 A. XRP -- because XRP is a cryptocurrency. If
11:10 11 you have a currency, you don't want a currency to
11:10 12 fall in value.

11:10 13 Q. What do you mean by, If you have a
11:10 14 currency?

11:10 15 MR. FIGEL: Objection.

11:10 16 A. If I'm selling someone a unit of currency,
11:11 17 which they may later use in transactions, I would
11:11 18 like, as the seller of the -- the initial seller,
11:11 19 to -- to see whether a buyer of XRP could actually
11:11 20 transact in it for the buyer's benefit.

11:11 21 Q. And I believe you testified earlier that
11:11 22 Ripple's business model was selling XRP, right?

11:11 23 A. Yes.

11:11 24 MR. FIGEL: Objection.

11:11 25 Q. And that's another reason why Ripple

11:11 1 doesn't want the price of XRP to decline materially,
11:11 2 is because Ripple generates revenues from selling
11:11 3 XRP.

11:11 4 MR. FIGEL: Objection.

11:11 5 A. No. It's -- if my revenue depends on
11:11 6 selling apples, I don't really care what the
11:11 7 post-sale value of an apple is.

11:12 8 Ripple is selling a currency. A currency
11:12 9 is something that people use to exchange for
11:12 10 something else. So Ripple would have an interest in
11:12 11 having people buy their currency; that is, people
11:12 12 would only buy Ripple's currency if they thought that
11:12 13 they could use it as a currency.

11:12 14 Q. Are you offering the opinion that XRP is a
11:12 15 currency?

11:12 16 MR. FIGEL: Objection.

11:12 17 A. No. I'm offering -- what am I offering an
11:12 18 opinion on, if anything?

11:12 19 No. I -- what I know is that Ripple sells
11:12 20 XRP and that XRP is used as a currency.

11:12 21 Q. Are you offering any opinion as to whether
11:13 22 XRP should be legally classified as a currency?

11:13 23 A. No.

11:13 24 Q. Could a third party benefit from Ripple's
11:13 25 conduct even if that third party was not made a

11:13 1 beneficiary by virtue of a provision in any of
11:13 2 Ripple's contracts?

11:13 3 MR. FIGEL: Objection.

11:13 4 A. I think you'd have to make that question
11:13 5 more concrete.

11:13 6 I mean, I don't know what type of third
11:13 7 party you're talking about or what you mean by a
11:13 8 "benefit."

11:13 9 Q. Well, you say in your report that you
11:13 10 couldn't find any provisions that would make a third
11:13 11 party a beneficiary of any of Ripple's contracts.
11:13 12 Right?

11:14 13 A. I -- yes.

11:14 14 Q. Are there ways that a third party could
11:14 15 benefit from Ripple's conduct, even if they weren't
11:14 16 described as a third-party beneficiary in any of
11:14 17 Ripple's contracts?

11:14 18 MR. FIGEL: Objection.

11:14 19 A. Well, if someone came to own Ripple and
11:14 20 Ripple increased in value, through any efforts of --
11:14 21 of -- if someone came to own XRP and XRP increased in
11:14 22 value, they would be happy about that.

11:14 23 Q. Right. So --

11:15 24 A. They could own it through buying it, having
11:15 25 it be willed to them, giving it to them as a gift.

11:15 1 Q. So hypothetical here: Ripple sells XRP to
11:15 2 Party B. There's nothing in the contract about any
11:15 3 other third party. And then Ripple -- and then
11:15 4 Party B sells that same XRP to Party C.

11:15 5 If Ripple does something to create -- to
11:15 6 increase the value of XRP, does Party C benefit?

11:15 7 MR. FIGEL: Objection.

11:15 8 A. Yes.

11:15 9 Q. Your report mentions the restatement of
11:15 10 contracts.

11:15 11 A. Yes.

11:15 12 Q. Does the restatement of contracts define
11:16 13 "investment contract" the same way as that term is
11:16 14 defined under the federal securities laws?

11:16 15 A. I don't think the restatement mentions the
11:16 16 word "investment contract" or the concept.

11:16 17 Q. Does the restatement of contracts govern
11:16 18 the determination of whether something is an
11:16 19 investment contract under the federal securities
11:16 20 laws?

11:16 21 MR. FIGEL: Objection.

11:16 22 A. No.

11:16 23 Q. Did Ripple sell XRP to purchasers who
11:16 24 acquired it for investment purposes?

11:16 25 MR. FIGEL: Objection.

11:17 1 A. I don't know to whom Ripple sold XRP.

11:17 2 Q. Well, you talk about it in your report.

11:17 3 A. Well, I mean, they -- I know they sold XRP.

11:17 4 But if you're asking me what the purpose was of any
11:17 5 particular buyer, I don't know what that purpose
11:17 6 would have been.

11:17 7 Q. Did any of the contracts you reviewed say
11:17 8 what the purpose of the -- of the XRP purchases were?

11:17 9 A. Not that I recall. But I do recall some
11:17 10 contracts explicitly saying that the buyer wasn't
11:17 11 purchasing XRP for an investment purpose.

11:17 12 Q. When an issuer of securities sells
11:17 13 securities to an investor, does the title and risk of
11:17 14 loss typically pass to the investor?

11:17 15 MR. FIGEL: Objection.

11:18 16 A. I -- I don't think that would be a standard
11:18 17 term in a contract of the type you described.

11:18 18 Q. I'm not -- independent of any contract, in
11:18 19 an IPO -- do you know what an IPO is?

11:18 20 A. Yes.

11:18 21 Q. When someone buys a company's securities in
11:18 22 an IPO, who assumes the title and risk of loss
11:18 23 associated with those securities?

11:18 24 MR. FIGEL: Objection.

11:18 25 A. The buyer.

11:18 1 Q. Under what circumstances did the -- does
11:18 2 the seller of securities retain title and risk of
11:18 3 loss after the security has been sold to an investor?

11:18 4 MR. FIGEL: Objection.

11:18 5 A. I don't think there are any such
11:18 6 circumstances; but if there are any, I don't have
11:18 7 them in mind.

11:19 8 Q. Can I ask you to look at paragraph 14 of
11:19 9 your report.

11:19 10 Do you see the sentence that says -- near
11:19 11 the middle, Rather than assume any post-sale
11:19 12 obligation to promote and increase the value of XRP,
11:20 13 the typical Ripple sales contract warns the customer
11:20 14 that the future value of XRP depends on the continued
11:20 15 willingness of market participants to engage fiat
11:20 16 currency for virtual currency?

11:20 17 A. Yes.

11:20 18 Q. How many contracts did you review that
11:20 19 contain that disclaimer?

11:20 20 A. I don't know exactly, but I would say that
11:20 21 that's a standard term in just about all of the
11:20 22 direct sales contracts that I looked at.

11:20 23 Q. How many of those did you look at?

11:20 24 A. I think I've said before that I don't have
11:20 25 a precise number of the contracts I reviewed in each

11:20 1 category.

11:20 2 Q. Then the next sentence, you write, The
11:21 3 service contracts in Howey set forth specific
11:21 4 contractually required value-affecting actions that
11:21 5 Howey had the unilateral ability to perform and that
11:21 6 were essential to enable the land purchaser to earn a
11:21 7 profit.

11:21 8 Why do you say that the Howey -- that the
11:21 9 Howey Company had the unilateral ability to harvest
11:21 10 and sell the oranges?

11:21 11 A. Because the Supreme Court in the Howey case
11:21 12 said that a future of an investment contract was that
11:21 13 the investors' return depended -- and the
11:21 14 Supreme Court used the word "solely" -- on the
11:21 15 efforts of others.

11:21 16 And I wanted to -- so I -- that is my
11:21 17 interpretation of what the Supreme Court meant by
11:21 18 that, was that Howey had the ability to affect the
11:22 19 return in the way that the Supreme Court was
11:22 20 referring to.

11:22 21 Q. Did the Howey Company have the unilateral
11:22 22 ability to harvest and sell the oranges?

11:22 23 A. Under the service contract, I think they
11:22 24 were the only ones that could, because the buyers of
11:22 25 orange groves were precluded from entering onto the

11:22 1 land to harvest oranges themselves.

11:22 2 Q. So it's your read of Howey that the
11:22 3 purchasers of the land sale contract were not
11:22 4 required to -- or did not have the ability to harvest
11:22 5 their own oranges?

11:22 6 A. I don't think they had the ability to
11:22 7 harvest their own oranges. I think they were
11:22 8 entitled to a share of the return from the oranges
11:22 9 that the Howey Company picked.

11:23 10 Q. But I thought the Howey companies told the
11:23 11 investors that they were under no obligation to use
11:23 12 Howey's services.

11:23 13 A. Howey told investors -- Howey -- well, let
11:23 14 me back up.

11:23 15 Howey sold investors orange groves. They
11:23 16 offered the investors a service contract that would
11:23 17 go along with the orange groves. It's my
11:23 18 recollection that about 85 percent of the buyers
11:23 19 purchased service contracts from Howey, and
11:23 20 15 percent of the buyers did not.

11:23 21 Q. And is it your understanding that the
11:23 22 15 percent of the investors in Howey who didn't
11:23 23 purchase the service contracts were not allowed to
11:23 24 enter the orange groves they purchased or harvest the
11:23 25 crop?

11:24 1 A. I think I recall language -- but I can't be
11:24 2 very precise about this -- that the service contracts
11:24 3 Howey offered were typical of service contracts
11:24 4 offered in the industry.

11:24 5 Q. Were there factors in Howey, beyond the
11:24 6 unilateral control of the Howey companies, that could
11:24 7 have affected the investors' actual profits or
11:24 8 expectations of profits?

11:24 9 MR. FIGEL: Objection.

11:24 10 A. I don't know anything that the Howey
11:24 11 Company did with respect to the value of oranges.

11:24 12 Q. Well, we know, from the Supreme Court's
11:24 13 decision, that Howey led the investors to expect
11:24 14 profits. Right?

11:25 15 MR. FIGEL: Objection.

11:25 16 A. We know that Howey said that if the future
11:25 17 was like the past, you would make money.

11:25 18 Q. And part of the expectation of profits in
11:25 19 Howey came from the efforts of the Howey companies.
11:25 20 Right?

11:25 21 A. Well, if the Howey Company didn't expend
11:25 22 any efforts under the service contracts, there
11:25 23 wouldn't have been any profits because there wouldn't
11:25 24 have been any oranges.

11:25 25 Q. Were there factors other than the actions

11:25 1 of the Howey companies that could have affected the
11:25 2 investors' profits?

11:25 3 MR. FIGEL: Objection.

11:25 4 A. Yeah, there's a market in oranges.

11:25 5 Q. So like if there's a deep freeze in
11:25 6 Florida, that could affect the investor's profits.

11:25 7 A. Yeah.

11:25 8 Yeah, as I said, there's a market in
11:25 9 oranges. That price of oranges is, I think, set by
11:26 10 supply and demand.

11:26 11 Q. And so the factors affecting supply and
11:26 12 demand could affect the price -- or could affect the
11:26 13 Howey's investors' returns independent of the efforts
11:26 14 of the Howey companies?

11:26 15 MR. FIGEL: Objection.

11:26 16 A. I would put it this way: The efforts of
11:26 17 the Howey companies were necessary for the investors
11:26 18 to receive a return but not sufficient.

11:26 19 Q. And even if the Howey companies took all
11:26 20 the necessary steps to generate profits for the
11:26 21 investors, there were things outside Howey's control
11:26 22 that could have affected the -- the return to the
11:26 23 investors?

11:27 24 MR. FIGEL: Objection.

11:27 25 A. I mean, I'm not an expert in the oranges

11:27 1 industry so I'm -- I can't really be -- you know,
11:27 2 give any testimony about how that industry works.

11:27 3 I do know that there's a market in oranges
11:27 4 and that the price is set by supply and demand, and
11:27 5 so any one buyer or seller probably couldn't affect
11:27 6 the price by anything it did, but -- but I don't have
11:27 7 personal knowledge of that industry, so it wouldn't
11:27 8 shock me if some industry expert contradicted what I
11:27 9 just said.

11:27 10 Q. Is it a -- a common feature of commercial
11:27 11 enterprises that external factors beyond the control
11:27 12 of management can affect the profits of the
11:27 13 enterprise and its investors?

11:27 14 A. It depends on the enterprise.

11:27 15 Q. What enter-- commercial enterprises are
11:28 16 immune from external factors beyond the control of
11:28 17 management affecting the company's profits?

11:28 18 MR. FIGEL: Objection.

11:28 19 A. No one's immune from the world, but you
11:28 20 have a lot more control over what goes on if you're a
11:28 21 monopolist than if you're working in a competitive
11:28 22 market. So as I said, it would depend on industry
11:28 23 structure and other things.

11:28 24 Q. Your report talks about how New York or
11:28 25 Delaware law governs many of the Ripple contracts?

11:28 1 A. Yes.

11:28 2 Q. How many of the contracts described in
11:28 3 your -- documented in your report are governed by
11:29 4 New York and Delaware law?

11:29 5 A. I don't know the precise number, but I
11:29 6 think a majority of them are.

11:29 7 Q. How many of the contracts are governed by
11:29 8 California law?

11:29 9 A. There are some, but it's my recollection
11:29 10 that that would be a relatively small fraction of the
11:29 11 full universe.

11:29 12 Q. How many of the 1700 contracts identified
11:29 13 in your report are governed by a jurisdiction that
11:29 14 takes a different approach to the Four Corners Rule?

11:29 15 MR. FIGEL: Objection.

11:29 16 A. I don't know the number, but the California
11:29 17 contracts would definitely be one of those
11:29 18 jurisdictions.

11:30 19 Q. What is the California approach to the
11:30 20 interpretation of integration clauses?

11:30 21 MR. FIGEL: Objection.

11:30 22 A. The California approach is that an
11:30 23 integration clause is evidence of the parties'
11:30 24 intention to make the contract the complete statement
11:30 25 of the rights and duties of the parties, but because

11:30 1 it is just evidence, it could be rebutted by other
11:30 2 evidence.

11:30 3 Q. In this case, does the presence of an
11:30 4 integration clause in any of Ripple's contracts
11:30 5 preclude the court from considering representations
11:31 6 made outside the four corners of Ripple's contracts?

11:31 7 A. If there is a merger or integration clause,
11:31 8 and you are in a jurisdiction such as New York or
11:31 9 jurisdictions that follow New York, a court would not
11:31 10 consider extracontractual representations when the
11:31 11 court is engaged on deciding what the contract --
11:31 12 what obligations the contract creates.

11:31 13 Q. What about in an SEC enforcement action
11:31 14 alleging violations of the federal securities laws?

11:31 15 A. I have --

11:31 16 MR. FIGEL: Objection.

11:31 17 A. I have no opinion on what a court would do
11:31 18 in that circumstance.

11:32 19 Q. You write in your report that statutory
11:32 20 interpretation is within your field of expertise?

11:32 21 A. Yes.

11:32 22 Q. Is that the case?

11:32 23 A. Well, I'm claiming it.

11:32 24 Q. Is the interpretation of a statute
11:32 25 typically a legal question for the court to decide?

11:32 1 A. Yes.

11:32 2 Q. Are you opining that any statute at issue
11:32 3 in this case is ambiguous?

11:32 4 MR. FIGEL: Objection.

11:32 5 A. No.

11:33 6 Q. Could you go to paragraph 16 of your
11:33 7 report.

11:33 8 So I want to refer you to the last word on
11:33 9 page 11, and then that sentence continuing on to
11:33 10 page 12.

11:33 11 A. Uh-huh.

11:33 12 Q. You write, Thus, under the standard
11:33 13 interpretive canon, the meaning of the word
11:33 14 "contract" in the statutory phrase "investment
11:33 15 contract" would be its common law meaning?

11:33 16 A. Yes.

11:33 17 Q. Does the Supreme Court say that in Howey?

11:33 18 A. No. The Supreme Court says that the
11:33 19 statute did not define the phrase "investment
11:33 20 contract," but it did not reach the question that I'm
11:34 21 talking about in my report.

11:34 22 Q. Can an investment contract be established
11:34 23 by a scheme or transaction?

11:34 24 MR. FIGEL: Objection.

11:34 25 A. I -- I'm not a securities law expert.

11:34 1 Q. The determination of whether Ripple's
11:34 2 offers and sales of XRP, whether those offers and
11:34 3 sales violate the federal securities laws, is that
11:34 4 determination governed by the common law of contracts
11:34 5 or the federal securities laws?

11:34 6 MR. FIGEL: Objection.

11:34 7 A. That would be determined by the federal
11:34 8 securities laws.

11:35 9 Q. So do you see paragraph 17 of your report,
11:35 10 the last sentence.

11:35 11 It says, It would follow that the contracts
11:35 12 Ripple uses to market XRP are distinguishable from
11:35 13 the contracts Howey used to market citrus groves?

11:35 14 A. Yes.

11:35 15 Q. In forming your opinions, did you consider
11:35 16 whether Ripple's representations on its website and
11:35 17 its social media posts are distinguishable or similar
11:36 18 to the sales talk from Howey?

11:36 19 MR. FIGEL: Objection.

11:36 20 A. No.

11:36 21 Q. Will you be offering any such opinion?

11:36 22 A. No.

11:36 23 Q. Will you be offering an opinion on whether
11:36 24 any of Ripple's contracts are distinguishable from
11:36 25 any contract in any court case applying the Howey

11:36 1 decision?

11:36 2 A. If I'm -- if I'm shown such a case and
11:36 3 asked for my views, I would give them.

11:36 4 But in the absence of being shown such a
11:36 5 case, I have no intention of giving any such opinion.

11:36 6 Q. So when you considered a particular
11:37 7 contract, a particular Ripple contract, did you
11:37 8 examine all of the contracts between Ripple and its
11:37 9 counterparty that governed their commercial
11:37 10 relationship?

11:37 11 MR. FIGEL: Objection.

11:37 12 A. I'm not sure I understand that question.
11:37 13 If -- if -- if it -- if the question is did I read
11:37 14 every word in each of these contracts, I've testified
11:37 15 to that before.

11:37 16 Q. And the answer's no?

11:37 17 A. And the answer would be no.

11:37 18 Is there -- if you're asking me a different
11:37 19 question, I'm not quite sure I understand what that
11:37 20 would be.

11:37 21 Q. And I'm sorry, because it is a different
11:37 22 question.

11:37 23 So when you were considering any specific
11:37 24 contract or -- that you discuss in your report, did
11:37 25 you examine all of the contracts between Ripple and

11:37 1 its counterparty governing their commercial
11:37 2 relationship or just the specific contract you
11:37 3 discussed in your report?

11:38 4 A. Once again, I'm a little bit confused.
11:38 5 When I -- when I looked at the contracts referred to
11:38 6 in my report, or other ones, I was asking what the
11:38 7 legal relationship -- what the relationship was that
11:38 8 the contract created.

11:38 9 Q. Right. So -- well, let's assume that
11:38 10 Ripple -- well, so let's use the example of the
11:38 11 direct sales contract.

11:38 12 For a direct sales contract between Ripple
11:38 13 and its counterparty, how do you know that that sales
11:38 14 contract was the only contract governing the
11:38 15 commercial relationship between Ripple and its
11:38 16 counterparty?

11:38 17 A. I don't know that.

11:39 18 Q. So talking about the direct sales
11:39 19 contracts, are you offering an opinion on how
11:39 20 Ripple's direct sales of XRP were similar or
11:39 21 different than an IPO?

11:39 22 A. No.

11:39 23 Q. What about a secondary offering?

11:39 24 A. In an IPO, you're selling securities. A
11:39 25 security is a contract between the holder and the

11:40 1 firm.

11:40 2 Ripple is selling a thing; that is, an item
11:40 3 of cryptocurrency, not a contract.

11:40 4 So there would be a major difference, if
11:40 5 I'm -- between selling a contract and selling a
11:40 6 thing.

11:40 7 Q. Isn't that the ultimate legal dispute in
11:40 8 this case?

11:40 9 MR. FIGEL: Objection.

11:40 10 A. No, I don't think so. You asked me whether
11:40 11 there was a similarity. I said Ripple was selling an
11:40 12 item of currency. In an IPO, you're selling
11:40 13 something different.

11:40 14 Q. So you're opining that what Ripple sold was
11:40 15 not a security?

11:40 16 MR. FIGEL: Objection.

11:40 17 A. No.

11:40 18 No, I'm not opining that at all.

11:40 19 Q. I think just said in an IPO, they sell
11:40 20 securities; in Ripple's case, they sell something
11:40 21 else.

11:40 22 A. No. In an IPO, you're selling a contract,
11:41 23 like a share of stock. If you're selling an item of
11:41 24 cryptocurrency, that's sold under a contract. It
11:41 25 isn't a contract.

11:41 1 Q. In an IPO, can the issuer sell securities
11:41 2 directly to a counterparty for the counterparty's own
11:41 3 use?

11:41 4 MR. FIGEL: Objection.

11:41 5 A. I'm not an expert in that.

11:41 6 Q. In a public or private securities offering,
11:41 7 can the issuer and its counterparty execute a single
11:41 8 master agreement containing the terms that would
11:41 9 apply to all subsequent sales of the issuer's
11:41 10 securities to the counterparty?

11:41 11 MR. FIGEL: Objection.

11:42 12 A. I'm not an expert in securities. I do know
11:42 13 that companies that issue stock hold back stock that
11:42 14 they may later issue. And if they later issue stock,
11:42 15 it would be under the same terms as the earlier
11:42 16 issue.

11:42 17 But I don't have an opinion on anything
11:42 18 else about that.

11:42 19 Q. Can the issuer of securities agree to
11:42 20 exchange a defined quantity of securities with a
11:42 21 counterparty for a defined quantity of U.S. dollars?

11:42 22 MR. FIGEL: Objection.

11:42 23 A. I don't have an opinion on that.

11:42 24 Q. Are you familiar with the term
11:43 25 "underwriter"?

11:43 1 A. Yes.

11:43 2 Q. And what's your understanding of the term
11:43 3 "underwriter"?

11:43 4 A. Underwriter is an intermediary between the
11:43 5 company and an ultimate purchaser.

11:43 6 Q. Are you offering an opinion -- I want to
11:43 7 ask you about the wholesale sales contracts you talk
11:43 8 about in your report.

11:43 9 Are you offering an opinion on whether the
11:43 10 wholesale sales contracts are different or similar
11:43 11 than underwriter contracts in a securities offering?

11:43 12 MR. FIGEL: Objection.

11:43 13 A. No, I'm not offering an opinion on that.

11:43 14 Q. In a securities offering, can the issuer of
11:43 15 the securities sell securities to an underwriter
11:43 16 whose stated intent is to sell those securities to an
11:43 17 ultimate third-party purchaser in a transaction to
11:44 18 which the issuer is not a party?

11:44 19 MR. FIGEL: Objection.

11:44 20 A. I think the answer is "yes" to that.

11:44 21 Q. Are you offering an opinion on whether the
11:44 22 wholesale sales contracts are different or similar
11:44 23 than broker-dealer contracts in a securities
11:44 24 offering?

11:44 25 MR. FIGEL: Objection.

11:44 1 A. No.

11:44 2 THE COURT REPORTER: If you answered, I'm
11:44 3 sorry; I didn't hear it.

11:44 4 A. No.

11:45 5 Q. Can you look at paragraph 27, please, of
11:45 6 your report.

11:45 7 And you write about -- in the second full
11:45 8 sentence, you write about the wholesale sales orders.

11:45 9 The counterparty would expressly represent
11:45 10 and warrant that it was not purchasing XRP for any
11:45 11 investment purpose.

11:45 12 Do you see that?

11:45 13 A. Yes.

11:45 14 Q. Did the direct sales contracts have a
11:45 15 similar representation on the part of the purchaser?

11:45 16 A. I don't think so.

11:46 17 But I have to check.

11:46 18 (Witness reviewing document.)

11:47 19 Q. Can I continue?

11:47 20 A. What?

11:47 21 Q. May I continue?

11:47 22 A. Yes.

11:47 23 Q. I'm sorry. I thought you were still --

11:47 24 A. No, no.

11:47 25 Q. Do you know whether or not the wholesale

11:47 1 contract counterparties marketed their XRP to third
11:47 2 parties for investment purposes?

11:47 3 A. No.

11:47 4 Q. Do you have any understanding of how the
11:47 5 wholesale contract counterparties marketed the XRP
11:47 6 they sold to third parties?

11:47 7 MR. FIGEL: Objection.

11:47 8 A. I have no direct knowledge of that.

11:48 9 Q. You write in your report that the wholesale
11:48 10 sales contracts were only executed between
11:48 11 February 2013 and March 2016.

11:48 12 A. Yes.

11:48 13 Q. During that period of time, what uses
11:48 14 beyond investment purposes existed for XRP?

11:48 15 MR. FIGEL: Objection.

11:48 16 A. I don't know.

11:48 17 Q. Do you know when Ripple's cross-border
11:48 18 payment software became commercially functional?

11:48 19 MR. FIGEL: Objection.

11:48 20 A. I don't know the date of that.

11:49 21 Q. For the wholesale contracts, does it make
11:49 22 commercial sense for Ripple's counterparty to
11:49 23 purchase the XRP from Ripple if the counterparty does
11:49 24 not believe it can sell that XRP to a third party for
11:49 25 a higher price?

11:49 1 MR. FIGEL: Objection.

11:49 2 A. It's a wholesale contract in which the
11:49 3 buyer pays. It would be irrational for the buyer to
11:49 4 believe that they couldn't resell for more than they
11:49 5 bought it for.

11:49 6 Q. And in paragraph 28 of your report, do you
11:50 7 see how you discuss purchase letters of intent, where
11:50 8 Ripple would pay the counterparty a commission of
11:50 9 ■ to ■ percent of the XRP the counterparty sold?

11:50 10 A. Yes.

11:50 11 Q. By earning that commission, is Ripple's
11:50 12 counterparty -- is Ripple's counterparty profiting
11:50 13 off its XRP purchases?

11:50 14 MR. FIGEL: Objection.

11:50 15 A. I think that's a -- that's an ambiguous
11:50 16 question.

11:50 17 The counterparty is providing a service,
11:50 18 and its being paid a commission. Whether the
11:50 19 counterparty's business is profitable or not, I have
11:50 20 no idea.

11:51 21 Q. The counterparty's generating revenues
11:51 22 based on that commission, correct?

11:51 23 MR. FIGEL: Objection.

11:51 24 A. Well, yeah, the counterparty gets a
11:51 25 commission on sales, so it has to have sales.

11:51 1 Q. And by paying those commissions, are
11:51 2 Ripple's efforts a cause of the counterparty's
11:51 3 revenues?

11:51 4 MR. FIGEL: Objection.

11:51 5 A. No. The counterparty's revenues depend on
11:51 6 the market for XRP, which is a function of a whole
11:51 7 variety of factors that would affect price and
11:51 8 demand. Ripple is just, as I said, buying services
11:51 9 and paying a commission.

11:52 10 Q. Do you see how you discuss the -- the
11:52 11 contracts described in paragraph 28 required Ripple's
11:52 12 counterparty to sell XRP to third parties at or above
11:52 13 market price?

11:52 14 MR. FIGEL: Objection.

11:52 15 A. Yes, I see that.

11:52 16 Q. Are you offering an opinion on whether that
11:52 17 requirement impacts the price of XRP?

11:52 18 A. No.

11:52 19 Q. Paragraph 29, you talk about the UCC.

11:52 20 Is that right?

11:52 21 A. Yes.

11:53 22 Q. Are you offering an opinion in this case
11:53 23 whether UCC Article 2 applies to the sales of XRP?

11:53 24 A. No.

11:53 25 Q. Are you offering an opinion whether any

11:53 1 part of the UCC applies to sales of XRP?

11:53 2 MR. FIGEL: Objection.

11:53 3 A. No.

11:53 4 Q. Does the UCC -- the UCC, that's the Uniform
11:53 5 Commercial Code?

11:53 6 A. Yes.

11:53 7 Q. Does the UCC contain a provision regarding
11:53 8 the sales of securities?

11:53 9 A. I think Article 8 contains -- regulates
11:53 10 security transactions.

11:53 11 Q. Is the UCC's definition of "securities" the
11:53 12 same as the definition of "securities" under the
11:53 13 federal securities laws?

11:53 14 A. I don't recall what Article 8 provides.

11:53 15 Q. In a lawsuit alleging violations of the
11:53 16 federal securities laws, if there's a dispute between
11:53 17 the UCC and the federal securities laws, which one
11:54 18 controls?

11:54 19 MR. FIGEL: Objection.

11:54 20 A. The federal securities laws.

11:54 21 Q. In this lawsuit, does the Court look to the
11:54 22 UCC or the federal securities laws to determine if
11:54 23 Ripple's XRP offers and sales involve securities?

11:54 24 MR. FIGEL: Objection.

11:54 25 A. The Court is going to look to whatever it

11:54 1 thinks is relevant.

11:54 2 Q. Are you offering an opinion whether the
11:54 3 Court should look to the UCC or the federal
11:54 4 securities laws?

11:54 5 A. No.

11:54 6 Q. Is it a legal defense to an SEC enforcement
11:54 7 action that the financial instrument at issue does
11:54 8 not meet the UCC definition of a security?

11:54 9 MR. FIGEL: Objection.

11:55 10 A. I don't know the precise answer to that
11:55 11 question, but I would doubt it.

11:55 12 Q. And do you see on paragraph 29, you list a
11:55 13 variety of terms that the Ripple sales contracts
11:55 14 typically contain?

11:55 15 A. Yes.

11:55 16 Q. Are you offering an opinion whether these
11:55 17 terms are also present in contracts for the sales of
11:55 18 securities in public or private offerings?

11:55 19 MR. FIGEL: Objection.

11:55 20 A. No.

11:56 21 Q. And then do you see, in paragraph 30, there
11:56 22 are a list of bullet points, that -- of types of
11:56 23 provisions that you say that the sales contracts
11:56 24 don't have?

11:56 25 A. Yes.

11:56 1 Q. All things being equal, would the presence
11:56 2 of any of these provisions make a contract more or
11:56 3 less likely to be an investment contract under the
11:56 4 federal securities laws?

11:56 5 MR. FIGEL: Objection.

11:56 6 A. I don't have an opinion on that.

11:56 7 Q. You see in paragraph 32, you talk about
11:56 8 programmatic sales contracts?

11:56 9 A. Yes.

11:56 10 Q. Are you offering an opinion on how the
11:57 11 programmatic contracts are similar or different to
11:57 12 underwriter contracts in a securities offering?

11:57 13 A. No.

11:57 14 MR. FIGEL: Objection.

11:57 15 A. No, I'm not.

11:57 16 Q. Are you offering an opinion on how the
11:57 17 programmatic contracts are similar or different to
11:57 18 broker-dealer contracts in a securities offering?

11:57 19 MR. FIGEL: Objection.

11:57 20 A. No.

11:57 21 Q. For the programmatic sales contracts, does
11:57 22 it make commercial sense for Ripple's counterparty to
11:57 23 purchase XRP from Ripple if it does not believe it
11:57 24 can sell that XRP to a third party for a higher
11:57 25 price?

11:57 1 MR. FIGEL: Objection.

11:57 2 A. I think there's a problem with your
11:57 3 question because in these agreements, they're not
11:58 4 selling XRP, they're just transferring it.

11:58 5 Q. Do you see, in paragraph 33, how you say
11:58 6 that the programmatic sales contracts are consignment
11:58 7 contracts?

11:58 8 A. I said in substance they're consignment
11:58 9 contracts. Consignment agreements.

11:58 10 Q. Are you offering an opinion on whether an
11:58 11 underwriter contract in a securities offering is a
11:58 12 consignment contract?

11:58 13 A. No.

11:58 14 MR. FIGEL: Objection.

11:58 15 Q. Do you have an opinion on that?

11:58 16 A. No.

11:58 17 Q. Are you offering an opinion on whether a
11:59 18 broker-dealer contract in a securities offering is a
11:59 19 consignment contract?

11:59 20 A. No.

11:59 21 MR. FIGEL: Objection.

11:59 22 MR. HANAUER: We're at noon, and we've been
11:59 23 going an hour and 15, I think. I just want to check
11:59 24 to make sure you're okay.

11:59 25 THE WITNESS: I could take a break. When

11:59 1 will we break for lunch?

11:59 2 MR. HANAUER: Let's go off the record.

11:59 3 THE VIDEOGRAPHER: We're off the record.

11:59 4 The time is 12:00 p.m.

11:59 5 (Discussion off the record.)

12:00 6 (A recess was taken from 12:00 noon to

12:00 7 12:13.)

12:11 8 THE VIDEOGRAPHER: Going back on the

12:11 9 record, the time is 12:13.

12:11 10 MR. FIGEL: Mr. Hanauer, before you begin,

12:11 11 could I just memorialize a -- an agreement we just

12:11 12 reached, which is that the normal practice, which is

12:11 13 an objection by one counsel, can serve to preserve

12:12 14 the objections of all parties?

12:12 15 MR. HANAUER: So stipulated.

12:12 16 MR. FIGEL: Thank you.

12:12 17 Q. So, Professor Schwartz, your report talks

12:12 18 about various market maker contracts.

12:12 19 A. Let me --

12:12 20 Q. In paragraph 38 of your report.

12:12 21 A. Yes.

12:12 22 Q. Are you offering an opinion whether or not

12:12 23 the securities -- strike that.

12:12 24 Are you offering an opinion whether the

12:12 25 issuer of securities is permitted to offer

12:12 1 consideration to a market maker in exchange for the
12:13 2 market maker making a market in the issuer's
12:13 3 securities?

12:13 4 A. No.

12:13 5 Q. Are you offering an opinion whether the
12:13 6 issuer of securities is allowed to contract with a
12:13 7 market maker in a way that allows the issuer to set
12:13 8 terms for the market maker's sales of the issuer's
12:13 9 securities?

12:13 10 A. No.

12:13 11 Q. Do you see, in paragraph 39, you talk about
12:13 12 the product incentive contracts?

12:13 13 A. Uh-huh. Yes.

12:14 14 Q. And I believe you talk about -- or are you
12:14 15 familiar with Ripple's On-Demand Liquidity product or
12:14 16 xRapid product?

12:14 17 A. I know what it is.

12:14 18 Q. And I believe that you classified contracts
12:14 19 related to that product as both product incentive
12:14 20 contract and master-hosted services contracts?

12:14 21 A. Yes.

12:14 22 Q. Are you aware that Ripple's On-Demand
12:14 23 Liquidity and xRapid contracts provided that Ripple
12:14 24 would pay incentives and rebates to the counterparty
12:14 25 for using On-Demand Liquidity or xRapid?

12:14 1 MR. FIGEL: Objection.

12:14 2 A. I am aware of contracts in which Ripple
12:14 3 made such agreements.

12:15 4 Q. Are you aware that On-Demand Liquidity or
12:15 5 xRapid required Ripple's counterparty to purchase XRP
12:15 6 in order to transfer currency using Ripple's
12:15 7 software?

12:15 8 MR. FIGEL: Objection.

12:15 9 A. Will you repeat that question, please? I'm
12:15 10 not sure I -- I followed the entire question.

12:15 11 (The record was read back.)

12:15 12 A. I'm not aware of that.

12:15 13 Q. And do you -- going to paragraph 46.

12:16 14 I think -- do you see how you talk about
12:16 15 the last sentence, Ripple also agreed to pay
12:16 16 MoneyGram certain market development fees and bonuses
12:16 17 in XRP if the transactions executed on Ripple's
12:16 18 platform exceeded specified volume thresholds?

12:16 19 A. Yes.

12:16 20 Q. Did those bonus provisions incentivize
12:17 21 MoneyGram to increase the volume of its XRP
12:17 22 transactions using Ripple's software product?

12:17 23 MR. FIGEL: Objection.

12:17 24 A. I don't know what "incentivize
12:17 25 MoneyGram" -- I mean, but those payments essentially

12:17 1 were linked to volume so the more the -- the larger
12:17 2 the dollar volume of transactions MoneyGram made
12:17 3 through the ODL platform, the greater the bonus
12:17 4 payment.

12:17 5 Q. Do you have an opinion on how MoneyGram
12:17 6 increasing the volume of its XRP transactions would
12:17 7 impact XRP's price?

12:17 8 MR. FIGEL: Objection.

12:17 9 A. No.

12:17 10 Q. Are you offering an opinion whether ODL or
12:17 11 xRapid would be commercially viable for its users if
12:17 12 not for the rebates and incentives paid by Ripple?

12:18 13 A. I have no opinion on that.

12:18 14 Q. Can you go to -- so do you see on
12:18 15 paragraph 35 of your report.

12:18 16 You list five bullet points for the type of
12:18 17 provisions you say are absent from the programmatic
12:18 18 contracts?

12:18 19 A. Yes.

12:18 20 Q. And then compare that with paragraph 42.

12:19 21 There are three bullet points for
12:19 22 provisions you say are absent from the service
12:19 23 contracts.

12:19 24 Do you see that?

12:19 25 A. Yup.

12:19 1 Q. And so one of the bullet points that's in
12:19 2 paragraph 35, but not paragraph 42, is a provision
12:19 3 that creates an ongoing obligation owed by Ripple to
12:19 4 the counterparty with respect to any tran-- XRP
12:19 5 transfer pursuant to the contract?

12:19 6 A. Yes.

12:19 7 Q. So I take it from the absence of a bullet
12:19 8 point like that in paragraph 42, did you find such
12:20 9 provisions in the services contracts?

12:20 10 A. I did not.

12:20 11 Q. Then -- if that's the case, then why did
12:20 12 you not include that bullet point in paragraph 42?

12:20 13 A. The -- they were different kinds of
12:20 14 contracts. In the programmatic contracts, you're --
12:20 15 XRP was transferred, so -- so it could be -- it could
12:20 16 conceivably be possible if there would be some
12:20 17 obligation with respect to what was transferred.
12:20 18 But -- essentially transferred for resale. So I
12:20 19 found no such provisions, so I said so.

12:20 20 Services contracts were a different kind of
12:21 21 agreement.

12:21 22 Q. What about the bullet point from
12:21 23 paragraph 35, you -- provisions that impose on Ripple
12:21 24 any fiduciary or similar duty owed to the
12:21 25 counterparty?

12:21 1 Were there provisions like that in the
12:21 2 services contract?

12:21 3 A. No.

12:21 4 Q. So if -- in paragraph 35, and in other
12:21 5 paragraphs of your report, you're listing all these
12:21 6 types of provisions that are not in the contracts.
12:21 7 Right?

12:21 8 A. Right.

12:21 9 Q. And you're doing the same thing with
12:21 10 paragraph 42. Right? The same type of exercise,
12:21 11 listing provisions that are not in the contract?

12:21 12 A. Yes.

12:21 13 Q. So what should we infer from the fact that
12:21 14 for some types of contracts, there are only -- you
12:22 15 only identify three types of provisions missing, but
12:22 16 for other types, of contracts, you identify four or
12:22 17 five types of provisions missing?

12:22 18 A. It's a question of the --

12:22 19 MR. FIGEL: Objection.

12:22 20 You can answer.

12:22 21 THE WITNESS: Should I --

12:22 22 MR. FIGEL: Yes, yeah, I just made the
12:22 23 record.

12:22 24 A. It's a function of the kind of contract it
12:22 25 is. So, for example, if I'm buying services, I can't

12:22 1 possibly own a fiduciary obligation to the seller so
12:22 2 it's pointless to say there's no fiduciary
12:22 3 obligation.

12:22 4 But if I'm selling something, then a
12:22 5 fiduciary obligation may be attached to it.

12:22 6 So, I think the things that I said are a
12:22 7 function of the kind of contracts that there were.

12:23 8 Q. Let's go to paragraph 56, please.

12:23 9 And you describe the Rosemoor agreement as
12:23 10 a representative example of an XRP direct sales
12:23 11 contract?

12:23 12 A. Yes.

12:23 13 Q. What percentage of the direct sales
12:23 14 contracts did you personally review?

12:23 15 MR. FIGEL: Objection.

12:23 16 A. I can't recall what percentage. I can only
12:23 17 recall that I reviewed a lot of them.

12:24 18 Q. Did you review all the direct sales
12:24 19 contracts?

12:24 20 A. I reviewed most of them because I reviewed,
12:24 21 as I previously testified, almost all of the
12:24 22 1700 contracts. But if you're going to ask me what
12:24 23 percentage fell in each category, I would have
12:24 24 trouble recalling that.

12:24 25 Q. And you didn't document that in any way.

12:24 1 Correct?

12:24 2 A. No.

12:24 3 Q. Did you -- just so I have a better record,
12:24 4 did you document in any way which contracts you
12:24 5 reviewed and which ones you didn't review?

12:24 6 A. Not in a systematic way. I made notes
12:24 7 about some of the contracts to refresh my
12:24 8 recollection when I was writing a report.

12:24 9 Q. Did you document in any way which contracts
12:24 10 you reviewed and which contracts you didn't review?

12:25 11 A. Up to the date of -- up to the date of --
12:25 12 no, I didn't -- I'm trying to -- trying to actually
12:25 13 answer your question truthfully.

12:25 14 I just was looking at what -- at
12:25 15 representative samples of the various kinds of
12:25 16 contracts. I didn't document the formal search
12:25 17 process on my part because I didn't do a formal
12:25 18 search process.

12:25 19 Q. When you looked at the direct sales
12:25 20 contracts, what did you do to determine that the
12:25 21 contracts you reviewed were the only contracts
12:25 22 governing the commercial relationship between Ripple
12:25 23 and its counterparty?

12:25 24 A. I don't know if they were the only
12:25 25 contracts that constituted a commercial relationship.

12:25 1 Q. What is Rosemoor Capital?

12:25 2 A. It's a -- I don't know very much about
12:26 3 them. They buy and trade.

12:26 4 Q. Are you aware that Rosemoor Capital is a
12:26 5 venture capital and private equity firm?

12:26 6 A. No.

12:26 7 Q. Are you aware that [REDACTED] is an
12:26 8 investor in Ripple?

12:26 9 A. I don't know anything about [REDACTED]
12:26 10 [REDACTED] business.

12:26 11 Q. When you determined that the [REDACTED]
12:26 12 agreement is a representative example of an XRP
12:26 13 direct sales contract, did you consider that [REDACTED]
12:26 14 [REDACTED] is an equity shareholder of Ripple?

12:26 15 A. No.

12:26 16 Q. How many direct sales contracts did you
12:27 17 personally review that did not involve an investor in
12:27 18 Ripple?

12:27 19 MR. FIGEL: Objection.

12:27 20 A. I have no idea.

12:27 21 Q. Did you consider how the Rosemoor contract
12:27 22 is in any way different from a contract in which the
12:27 23 issuer of securities agrees to sell its securities
12:27 24 directly to an institutional investor?

12:27 25 MR. FIGEL: Objection.

12:27 1 A. No.

12:27 2 Q. Are you offering an opinion that the
12:27 3 Rosemoor contract is different from a contract in
12:27 4 which the issuer of securities agrees to sell its
12:27 5 securities directly to an institutional investor?

12:27 6 MR. FIGEL: Objection.

12:28 7 A. Well, you would only say that under the
12:28 8 Rosemoor agreement, they're selling XRP, which itself
12:28 9 isn't a security.

12:28 10 Q. You're offering that opinion in this case?

12:28 11 A. Well, XRP is a thing, not -- I mean, you
12:28 12 asked me whether the contracts under which XRP is
12:28 13 sold are investment contracts. I have no opinion
12:28 14 about that.

12:28 15 I just know that XRP is like a widget.

12:28 16 Q. Are you offering the opinion that XRP is
12:28 17 not a security?

12:28 18 MR. FIGEL: Objection.

12:28 19 A. No.

12:28 20 Q. Can a widget be a security?

12:28 21 MR. FIGEL: Objection.

12:28 22 A. I don't see -- I don't see how.

12:29 23 Q. No matter the commercial circumstances?

12:29 24 MR. FIGEL: Objection.

12:29 25 A. I think there's a difference between a

12:29 1 contract and a thing.

12:29 2 Q. Can an orange grove be a security?

12:29 3 A. Orange grove is a thing.

12:29 4 Q. Can an orange grove be a security?

12:29 5 A. Itself? No.

12:29 6 I guess I would add that a car isn't a

12:29 7 security. A TV isn't a security.

12:29 8 Q. Can offers or sales of orange groves

12:29 9 constitute the offer and sale of securities?

12:29 10 MR. FIGEL: Objection.

12:29 11 A. I don't have an opinion on that.

12:30 12 Q. Do you have an opinion on whether the offer

12:30 13 or sale of anything can constitute the offer or sale

12:30 14 of a security?

12:30 15 MR. FIGEL: Objection.

12:30 16 A. It would depend on -- it would depend on

12:30 17 the terms.

12:30 18 Q. But are you offering an opinion in this

12:30 19 case?

12:30 20 A. No.

12:30 21 MR. FIGEL: Can I just add an objection? I

12:30 22 mean the last question.

12:30 23 Thanks.

12:30 24 Q. Can you look at paragraph 68, please.

12:31 25 And do you see that you said that the

12:31 1 Rosemoor agreement contains terms related to
12:31 2 restrictions on transfer of XRP by Rosemoor?

12:31 3 A. I recall saying that. Is there a paragraph
12:31 4 that you are particularly referring to?

12:31 5 Q. I'm --

12:31 6 A. Oh, yeah.

12:31 7 Q. Of your report, 68. I'm sorry.

12:31 8 A. Yes, okay.

12:31 9 (Witness reviewing document.)

12:31 10 Q. Does the Rosemoor contract allow the
12:31 11 parties to set a period of time in which Rosemoor
12:31 12 cannot resell or otherwise distribute the XRP it
12:31 13 purchased from Ripple?

12:31 14 A. Yeah, I recall that.

12:31 15 Q. Does the Rosemoor contract allow the
12:32 16 parties to set a limitation on the amount of XRP
12:32 17 that -- or purchase from Ripple that Rosemoor can
12:32 18 sell on a daily basis?

12:32 19 MR. FIGEL: Objection.

12:32 20 A. I think there were sales restrictions.

12:32 21 Q. And how many contracts did you review
12:32 22 containing restrictions on what Ripple's counterparty
12:32 23 could do with the XRP they obtained from Ripple?

12:32 24 A. I don't have a number, but there were some
12:32 25 that had such wholesale restrictions.

12:32 1 Q. How many contracts did you review that
12:32 2 contained restrictions limiting the quantity of XRP
12:32 3 the purchaser could obtain to the amount needed for
12:32 4 the purchaser's non-investment purposes?

12:33 5 MR. FIGEL: Objection.

12:33 6 A. I don't recall.

12:33 7 Q. How many contracts did you review
12:33 8 containing restrictions limiting Ripple's
12:33 9 counterparty from selling the XRP they purchased from
12:33 10 Ripple only to parties outside the United States?

12:33 11 MR. FIGEL: Objection.

12:33 12 A. I only recall reading a couple of contracts
12:33 13 like that.

12:33 14 Q. How many contracts did you review limiting
12:33 15 Ripple's counterparty from selling the XRP they
12:33 16 obtained from Ripple only to accredited investors?

12:33 17 A. I don't recall any such restrictions.

12:33 18 Q. How many contracts did you review that
12:33 19 contained restrictions allowing Ripple's counterparty
12:34 20 to sell the XRP they obtained from Ripple only to
12:34 21 those third parties that would use XRP for
12:34 22 non-investment purposes?

12:34 23 MR. FIGEL: Objection.

12:34 24 A. I recall that there was such contracts. I
12:34 25 don't recall the number.

12:34 1 MR. HANAUER: Can you send Exhibit 8,
12:34 2 please.

12:34 3 (XRP Purchase Summary was marked
12:34 4 Exhibit AS-8 for identification, as of this
12:34 5 date.)

12:34 6 MR. HANAUER: One for the court reporter,
12:34 7 please.

12:35 8 Q. Is Exhibit 8 a copy of the XRP purchase
12:35 9 summary you reference in paragraph 69 of your report?

12:35 10 A. Yes.

12:35 11 Q. So do you see how there's a line for
12:35 12 lock-up period and daily sales limitations, on
12:35 13 Exhibit 8?

12:35 14 A. Yes.

12:35 15 Q. And are those the sales restrictions we
12:35 16 were just talking about or resale restrictions?

12:36 17 A. Yes.

12:36 18 Q. Did you review any documents, including
12:36 19 other summary of XRP purchases, that actually imposed
12:36 20 a lock-up period or daily sale limitation?

12:36 21 A. Yes.

12:36 22 Q. How many did you review?

12:36 23 A. You know, I -- this may short-circuit it,
12:36 24 but I didn't really count. So. I -- if the answer
12:36 25 is, did I review a contract of a certain type or -- a

12:36 1 few contracts or some contracts, the answer would be
12:36 2 yes. If you're asking me whether it's 11 or 34, I
12:36 3 don't have an answer to that.

12:36 4 Q. By setting a lock-up period or volume
12:36 5 restriction, could one of these XRP purchase
12:36 6 summaries add a substantive term to a direct sales
12:37 7 contract?

12:37 8 MR. FIGEL: Objection.

12:37 9 A. I would have to review the contract. There
12:37 10 would be a question whether this was a modification
12:37 11 or not. Modifications are not enforceable unless
12:37 12 they're supported by a separate consideration.

12:37 13 On the other hand, this document says it's
12:37 14 governed by the master agreement, and it could just
12:37 15 be filling in the blanks. If it's filling in the
12:37 16 blanks, then it would be enforceable.

12:38 17 Q. Are you -- sitting here today, are you
12:38 18 aware of the length of any lock-up period or daily
12:38 19 sales limitation governing any of Ripple's XRP sales
12:38 20 to Rosemoor?

12:38 21 A. No. I'm not aware -- I have a recollection
12:38 22 that they went through [REDACTED], but I don't
12:38 23 have any particular recollection.

12:38 24 Q. And are you offering any opinion on how the
12:38 25 lock-up periods or daily volume limitations could

12:38 1 affect the price of XRP?

12:38 2 A. No.

12:39 3 Q. So in paragraph 71 of your report, you say
12:39 4 that each of the direct sales contracts is in
12:39 5 substance similar to the relevant part of the
12:39 6 Rosemoor agreement?

12:39 7 A. Uh-huh. Yes.

12:39 8 Q. What was your basis for saying that for the
12:39 9 sales contracts you did not personally review?

12:39 10 A. I think the answer to that question is in
12:39 11 the first sentence of paragraph 71.

12:40 12 I don't have anything to add to my -- to
12:40 13 what the first sentence of paragraph 71 says.

12:40 14 Q. So is the answer that for the contracts,
12:40 15 you didn't personally review your basis for
12:40 16 concluding that those contracts were in substance
12:40 17 similar to the Rosemoor agreement; the basis of that
12:40 18 was the work done by counsel?

12:40 19 A. It was a combination of my work and work
12:40 20 done from counsel, acting at my direction. I asked
12:40 21 counsel in particular, whether those contracts were
12:40 22 relevantly different. I assume that my counsel knew
12:40 23 how to read a contract, too.

12:40 24 Q. Are there any written communications on
12:41 25 that subject between you and counsel?

12:41 1 A. I don't recall any.

12:41 2 Q. Do you see the list of bullet points, on
12:41 3 paragraph 71 of provisions you say that the direct
12:41 4 sales contracts typically contain?

12:41 5 A. Yes.

12:41 6 Q. Are there direct sales contracts listed on
12:41 7 Exhibit C that do not contain all those terms?

12:41 8 A. Well, yeah, because some of the direct
12:41 9 sales contracts just were an exchange of a certain
12:41 10 number of XRP in return for price, but this contract
12:42 11 contemplates a series of sales.

12:42 12 Q. Were there direct sales contracts that had
12:42 13 terms that created an ongoing obligation owed by
12:42 14 Ripple after delivery of the purchased units of XRP?

12:42 15 A. I don't recall any such language that would
12:42 16 sustain an inference like that.

12:42 17 Q. Then why is that bullet point missing from
12:42 18 paragraph 72?

12:42 19 MR. FIGEL: Objection.

12:43 20 A. I don't recall why it's missing, but I
12:43 21 would -- it is my recollection that you couldn't find
12:43 22 any such language in that contract.

12:43 23 Q. Okay. Let's go to paragraph 75, please,
12:43 24 where you talk about the wholesale sales contracts.

12:43 25 For the wholesale sales contracts, what did

12:43 1 you do to determine that the contracts you reviewed
12:43 2 were the only contracts governing the relationship
12:43 3 between Ripple and its counterparty?

12:43 4 A. I didn't do anything.

12:44 5 Q. What is [REDACTED]?

12:44 6 A. I don't know very much about the
12:44 7 business -- businesses of any of the buyers or a lot
12:44 8 of the buyers to these contracts because that was
12:44 9 beyond the scope of my report to know that.

12:44 10 Q. Are you aware that [REDACTED] is a digital
12:44 11 asset exchange?

12:44 12 A. I think I knew that. But as I said, I
12:44 13 wasn't asked to investigate or learn about the
12:44 14 business buyers; that is, what their businesses were.

12:44 15 Q. Could the business of Ripple's counterparty
12:44 16 inform what they intended to do with the XRP they
12:45 17 obtained from Ripple?

12:45 18 MR. FIGEL: Objection.

12:45 19 A. Well, there were contractual restrictions
12:45 20 on what they could do. I don't have direct knowledge
12:45 21 as to whether they adhered to those restrictions or
12:45 22 not.

12:45 23 Q. But beyond the four corners of the
12:45 24 contract, if someone wanted to know what the
12:45 25 purchaser of XRP wanted to do with that XRP that they

12:45 1 purchased, would they want to know what the business
12:45 2 is of the person or entity that purchased the XRP?

12:45 3 MR. FIGEL: Objection.

12:45 4 A. Well, you're describing a -- a search. If
12:45 5 I -- I want to know what Bitstamp was doing, I would
12:45 6 assume that someone would search in a rational way to
12:45 7 find out what Bitstamp was doing.

12:45 8 Q. Did you perform any such searches?

12:46 9 A. No.

12:46 10 MR. HANAUER: Exhibit 9, please.

12:46 11 (Bitstamp Wholesale Order was marked
12:46 12 Exhibit AS-9 for identification, as of this
12:46 13 date.)

12:46 14 Q. Is Exhibit 9 a copy of the [REDACTED]
12:46 15 wholesale order referenced in paragraph 75 of your
12:46 16 report?

12:47 17 A. I think it is.

12:47 18 Q. Do you see the second paragraph of
12:47 19 Exhibit 9? It says, This agreement governs the
12:47 20 purchase and sale of the purchased Ripple currency
12:47 21 specified below.

12:47 22 A. Yes.

12:47 23 Q. Why does it refer to whatever Ripple is
12:47 24 selling as purchased Ripple currency?

12:47 25 MR. FIGEL: Objection.

12:47 1 (Witness reviewing document.)

12:48 2 A. Can you repeat that question? I just
12:48 3 was --

12:48 4 THE WITNESS: Mr. Reporter, could you
12:48 5 please repeat that question.

12:48 6 (The record was read back.)

12:48 7 A. I don't know.

12:48 8 Q. And then, do you see on Exhibit 9 -- if we
12:48 9 go to Section 1.4 of that contract, which I believe
12:48 10 is on page 2 of Exhibit 9.

12:48 11 A. Yes.

12:49 12 Q. And one of the terms of the sale is that
12:49 13 Bitstamp represents that it will not resell or
12:49 14 otherwise distribute the Ripple currency to any party
12:49 15 if Bitstamp has actual or reasonable knowledge that
12:49 16 such other party intends to purchase or acquire the
12:49 17 Ripple currency as an investment.

12:49 18 A. Yes, I looked at this section.

12:49 19 Q. What is the purpose of such a provision?

12:49 20 MR. FIGEL: Objection.

12:49 21 A. I can only infer purpose from the words. I
12:50 22 don't have any independent knowledge of what the
12:50 23 purpose is -- of the parties were in adopting
12:50 24 Section 1.4.

12:50 25 Q. I'll take your reasonable inference.

12:50 1 What's that?

12:50 2 A. Well, it -- my reasonable inference is that
12:50 3 they -- that Ripple wanted XRP to be used in commerce
12:50 4 rather than held.

12:50 5 Q. And what do you mean by "used in commerce"?

12:50 6 A. Used in transactions.

12:50 7 Q. You mean used to facility cross-border
12:50 8 payments?

12:50 9 MR. FIGEL: Objection.

12:50 10 A. I don't know anything in -- as I said, I
12:50 11 don't have any independent knowledge, but the point
12:51 12 of a restriction like this would be that you want the
12:51 13 product to be used in various kinds of transactions.
12:51 14 I don't know whether they would be cross border or
12:51 15 not cross border.

12:51 16 Q. When someone purchases digital currency off
12:51 17 a digital currency exchange, does the exchange have
12:51 18 any knowledge whether the purchaser intends to use
12:51 19 the digital currency for investment purposes?

12:51 20 MR. FIGEL: Objection.

12:51 21 A. I -- I don't know what particular people
12:51 22 from particular exchanges know, but that's not the
12:51 23 point of an exchange is to know what people use
12:52 24 what's being traded -- what purpose they have. The
12:52 25 point of an exchange is to facilitate deals.

12:52 1 Q. And the Bitstamp wholesale order, that's
12:52 2 back from 2000-- or Exhibit 9, that's back from 2013?
12:52 3 That's when it was executed?

12:52 4 A. That's the effective date.

12:52 5 Q. And back in 2013, what noninvestment uses
12:52 6 existed for XRP?

12:52 7 A. I don't know.

12:52 8 Q. Were -- back in 2013, were any of Ripple's
12:52 9 products that used XRP in commercial operation?

12:52 10 MR. FIGEL: Objection.

12:52 11 A. I don't know that.

12:52 12 Q. Are you offering an opinion that the
12:52 13 Bitstamp contract in Exhibit 9 is different from a
12:52 14 contract in which the issuer of securities agrees to
12:52 15 sell its securities directly to an exchange?

12:53 16 MR. FIGEL: Objection.

12:53 17 A. No.

12:53 18 Q. And then, do you see on paragraph -- excuse
12:53 19 me, on Section 9.3 of Exhibit 9, the no third-party
12:53 20 beneficiaries?

12:53 21 A. Yes.

12:53 22 Q. Are you offering an opinion whether the
12:53 23 federal securities laws allow parties to an
12:53 24 investment contract to waive away the requirements of
12:53 25 the Securities Act of 1933?

12:53 1 MR. FIGEL: Objection.

12:53 2 A. No.

12:53 3 Q. Do you have an opinion on that subject?

12:53 4 A. No.

12:53 5 Q. Can you look at paragraph 85 of your
12:54 6 report, please.

12:54 7 And you list a bunch of bullet points after
12:54 8 writing, Specifically, the wholesale contracts
12:54 9 typically contain. And then you list various types
12:54 10 of provisions.

12:54 11 Do you see that?

12:54 12 A. Yes.

12:54 13 Q. Are there wholesale sales contracts listed
12:54 14 on Exhibit C to report that do not contain any of the
12:54 15 terms listed in those bullet points?

12:55 16 A. I don't recall reading any such contract.

12:55 17 Q. Then why are you using the word "typical,"
12:55 18 or "typically"?

12:55 19 A. I'm using the word "typical" as a hedge
12:55 20 because at that point, I hadn't read every single
12:55 21 one.

12:55 22 Q. And then in paragraph 86, where you say
12:55 23 that Each of the wholesale sales contracts listed in
12:55 24 Exhibit C lacks any express provision or
12:55 25 representation, you were relying on counsel to tell

12:55 1 you that for the contracts you didn't review?

12:55 2 A. Yes.

12:56 3 Q. Did any of the wholesale sales contracts
12:56 4 you reviewed, or have counsel review, contain a
12:56 5 provision restricting what someone who purchased XRP
12:56 6 from Ripple's counterparty could do with the XRP they
12:56 7 purchased?

12:56 8 MR. FIGEL: Objection.

12:56 9 A. I don't recall any such restriction.

12:56 10 MR. HANAUER: Ready for lunch?

12:56 11 THE WITNESS: Yes.

12:56 12 THE VIDEOGRAPHER: Off the record. The
12:56 13 time is 12:57.

12:56 14 (Luncheon recess at 12:57)

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12:56 1 A F T E R N O O N S E S S I O N

12:56 2 (1:52)

12:56 3 ALAN SCHWARTZ

12:56 4 resumed, having been previously duly

12:56 5 sworn by a Notary Public, was

12:56 6 examined and testified further

12:56 7 as follows:

01:50 8 THE VIDEOGRAPHER: We are going back on the
01:50 9 record. The time is 1:52.

01:50 10 CONTINUED EXAMINATION BY MR. HANAUER:

01:50 11 Q. Professor Schwartz, can you please look at
01:50 12 paragraph 89 of your report, where you talk about the
01:51 13 programmatic contracts.

01:51 14 And you reference an agreement between
01:51 15 Ripple and GSR Holdings Limited?

01:51 16 A. Yes.

01:51 17 Q. And is Exhibit 10, which I -- which should
01:51 18 be in front of you, is that a copy of the GSR
01:51 19 agreement referenced in paragraph 89 of your report?

01:51 20 (Agreement between Ripple and GSR Holdings
01:51 21 Limited was marked Exhibit AS-10 for
01:51 22 identification, as of this date.)

01:51 23 A. I'm afraid I don't have Exhibit 10.

01:51 24 Oh, okay. Now I have Exhibit 10.

01:51 25 Yes.

01:51 1 Q. And when you looked at the programmatic
01:52 2 contracts, what did you do, if anything, to determine
01:52 3 that the contracts you reviewed were the only
01:52 4 contracts governing the commercial relationship
01:52 5 between Ripple and its counterparty?

01:52 6 A. I didn't do anything.

01:52 7 Q. What is GSR Holdings Limited?

01:52 8 A. GSR -- I think it's a digital asset
01:52 9 exchange.

01:52 10 Q. And did all of the programmatic contracts
01:52 11 you reviewed or had reviewed for you by counsel have
01:52 12 a digital asset exchange as the counterparty?

01:52 13 MR. FIGEL: Objection.

01:53 14 A. I think the answer is yes.

01:53 15 Q. And do you see, on Exhibit 10, Section 2,
01:53 16 it says, GSR agrees to transact in XRP according to
01:53 17 the then current programmatic schedule provided by
01:53 18 Ripple, (programmatic market activity) subject to the
01:53 19 terms of this agreement?

01:53 20 A. Yes.

01:53 21 Q. And did you review any of the program --
01:53 22 programmatic market activity schedules?

01:53 23 A. I think I reviewed the one attached to the
01:53 24 GSR agreement.

01:53 25 Q. Is that the only one?

01:53 1 A. I don't recall -- I -- I probably reviewed
01:54 2 one or two others, but I mainly focused on that one.

01:54 3 Q. And which one was the one -- which schedule
01:54 4 was attached to the programmatic -- the GSR
01:54 5 agreement?

01:54 6 A. Whichever the one was attached was the one
01:54 7 I looked at.

01:54 8 Q. And that's where I'm getting at, I'm not
01:54 9 sure there is one attached to the agreement, and I
01:54 10 don't see any listed in your report.

01:54 11 A. No, I think this is about -- I have a
01:54 12 recollection, but it may be in error, in one of the
01:54 13 large binders that I was given, I saw such a thing,
01:55 14 but -- but I can't right now reconstruct it.

01:55 15 Q. And you think you may have looked at one?
01:55 16 Just one?

01:55 17 A. I haven't looked at a lot of them.

01:55 18 Q. Do you know how many exist?

01:55 19 A. No.

01:55 20 Q. Do you know what they say, the program--
01:55 21 the programmatic market activity schedules?

01:55 22 A. I think they -- they control the -- the
01:55 23 timing and distribution of Ripple.

01:55 24 I'm sorry.

01:55 25 Q. Do you need to take that?

01:55 1 A. I don't have to take it, I just wanted to
01:55 2 not take it.

01:55 3 Q. And I think your answer was -- when I asked
01:55 4 you about what the programmatic market activity
01:55 5 schedules say, I think you responded, They control
01:55 6 the timing and distribution of Ripple?

01:55 7 A. Of -- I mean of XRP.

01:56 8 Q. And could your opinions about the
01:56 9 programmatic contracts change based on what's in the
01:56 10 schedules that you did not review?

01:56 11 MR. FIGEL: Objection.

01:56 12 A. Yeah, if there's anything inconsistent with
01:56 13 anything I said, that would -- and it was materially
01:56 14 inconsistent, my views would change.

01:56 15 Q. And do you see, on Exhibit 10, I want to
01:56 16 refer you to Section 3.

01:56 17 The remittance of proceeds to Ripple.

01:57 18 A. Yes.

01:57 19 Q. So what is your understanding of how that
01:57 20 works?

01:57 21 MR. FIGEL: Objection.

01:57 22 Q. Of how GSR makes money off this contract.

01:57 23 MR. FIGEL: Objection.

01:57 24 A. What I infer from the contract is the
01:57 25 ■ percent is a commission.

01:57 1 Q. Did you review any other programmatic
01:57 2 contracts that allowed Ripple's counterparty to
01:57 3 retain a portion of the proceeds from distributing
01:57 4 the XRP obtained from Ripple?

01:57 5 MR. FIGEL: Objection.

01:57 6 A. I think I did, but I don't have a direct
01:57 7 recollection of that.

01:57 8 Q. If I asked you to assume that Ripple's
01:58 9 efforts caused the price of XRP to increase, would
01:58 10 Exhibit 10 lead GSR to expect profits based on
01:58 11 Riffle -- Ripple's efforts?

01:58 12 MR. FIGEL: Objection.

01:58 13 A. As I recall, your question was efforts to
01:58 14 increase the price. Was that -- was that what you
01:58 15 said?

01:58 16 Q. Yeah. Assume -- and I know it's disputed
01:58 17 in this case. But just assume that Ripple's efforts,
01:58 18 in fact, caused the price of XRP to increase.

01:58 19 Okay?

01:58 20 A. Yeah.

01:58 21 And the question is, would that affect
01:58 22 GSR's return?

01:58 23 Q. If that's the case, can GSR expect profits
01:58 24 off this contract in Exhibit 10 based on Ripple's
01:59 25 efforts?

01:59 1 MR. FIGEL: Objection.

01:59 2 A. I can't answer that question without
01:59 3 knowing what -- what you -- what Ripple would be
01:59 4 doing.

01:59 5 For example, increasing the price is
01:59 6 consistent with reducing the supply. Since GSR gets
01:59 7 compensated on the basis of the sales it makes, if
01:59 8 supply shrunk, they would lose money rather than gain
01:59 9 it so that there would be a question as to what
01:59 10 Ripple was doing.

01:59 11 Q. Could reducing the supply of XRP increase
01:59 12 its price?

01:59 13 MR. FIGEL: Objection.

01:59 14 A. Reducing -- this is an "other things equal"
01:59 15 question?

01:59 16 Q. Correct.

01:59 17 A. Other things equal, if the supply curve
01:59 18 shifts in, the price goes up, assuming demand is
01:59 19 unchanged.

01:59 20 Q. So assuming demand is unchanged, if the
02:00 21 supply of XRP drops, the price of XRP goes up?

02:00 22 MR. FIGEL: Objection.

02:00 23 A. I mean, I can't say that as a matter of
02:00 24 fact. It's a matter of theory. If demand is
02:00 25 unchanged and the supply of an asset falls, the price

02:00 1 of the asset should rise.

02:00 2 Q. Are you aware of any efforts by Ripple, to
02:00 3 decrease the supply of XRP available to the
02:00 4 marketplace?

02:00 5 MR. FIGEL: Objection.

02:00 6 A. No.

02:00 7 MS. PROSTKO: Objection.

02:00 8 Q. Are you aware of Ripple's escrow program?

02:00 9 A. Excuse me?

02:00 10 Q. Are you aware of Ripple's escrow program?

02:00 11 A. Yes, I think so.

02:00 12 Q. What do you know about that?

02:00 13 MR. FIGEL: Objection.

02:00 14 A. I think it's an orderly market provision.

02:00 15 Q. Can you elaborate, please.

02:00 16 A. I don't have much more to say than that,
02:00 17 that it's -- it's an interest of any seller to insure
02:01 18 that -- essentially to reduce volatility.

02:01 19 Q. Is that in the contracts, the escrow
02:01 20 program?

02:01 21 MR. FIGEL: Objection.

02:01 22 A. No. It's what I infer from -- it's what --
02:01 23 what I would infer, but it is not so far as I can
02:01 24 tell in the contract.

02:01 25 Q. Can you look at paragraph 101 of your

02:01 1 report, please.

02:01 2 And you -- just picking up halfway through
02:01 3 that first sentence, you write, I conclude that each
02:01 4 of the programmatic contracts is in substance similar
02:01 5 to the GSR agreement.

02:02 6 A. Yes.

02:02 7 Q. And at the time you wrote that, you were
02:02 8 relying on Ripple's attorneys to tell you about the
02:02 9 contracts that you did not personally review?

02:02 10 A. Yeah. I think I've testified to that.

02:02 11 Q. And would that be the case for any contract
02:02 12 that you didn't personally review, you relied on
02:02 13 Ripple's attorneys to tell you whether they were
02:02 14 similar to the contracts you did review?

02:02 15 MR. FIGEL: Objection.

02:02 16 A. That's partly right. I also asked whether
02:02 17 there were material differences.

02:02 18 Q. So for any contract that you did not
02:02 19 personally review, you relied on Ripple's counsel to
02:02 20 tell you whether there were material similarities or
02:02 21 differences to the contracts that you had reviewed?

02:03 22 A. That's correct.

02:03 23 Q. And then, in staying with paragraph 1,
02:03 24 you're saying, after you -- strike that. Going back
02:03 25 to paragraph 101, after you write that the

02:03 1 programmatic contracts are similar to the GSR
02:03 2 agreement, you write, Specifically, each of these
02:03 3 contracts contains a provision stating that the
02:03 4 agreement in any related documents constitute the
02:03 5 entire agreement between the parties?

02:03 6 A. Yes.

02:03 7 Q. Is that type of provision, that's an
02:03 8 integration clause?

02:03 9 A. Yes, it is.

02:03 10 Q. And why is it that an integration clause
02:03 11 makes all the programmatic contracts similar in
02:03 12 substance?

02:03 13 MR. FIGEL: Objection.

02:04 14 A. I didn't say that.

02:04 15 Q. Well, you write -- the first sentence says
02:04 16 they're all similar in substance. Paragraph 101.
02:04 17 Right?

02:04 18 A. Yes.

02:04 19 Q. And then the second sentence is,
02:04 20 Specifically these contracts all have integration
02:04 21 clauses?

02:04 22 A. Yeah, that's an example of similarity.
02:04 23 Other examples of similarity are in paragraph 102.

02:04 24 Q. So I guess the -- the presence of
02:04 25 integration clauses is not what makes all of these

02:04 1 programmatic contracts the same; they just all happen
02:04 2 have to integration clauses?

02:04 3 A. Well, they can't be the same because
02:04 4 they're different, logically speaking.

02:04 5 The contracts, I thought, were similar in
02:05 6 important respects, of which the presence of an
02:05 7 integration clause is one.

02:05 8 Q. Do most commercial contracts between
02:05 9 sophisticated parties contain integration clauses?

02:05 10 A. I can't answer that.

02:05 11 Q. Well, you're an expert on contracts, right?

02:05 12 A. There are maybe 20 million commercial
02:05 13 contracts a year. If you're asking me whether
02:05 14 2,417,312 have an integration clause, I'd say I don't
02:05 15 know the answer to that.

02:05 16 Q. But, I mean, you studied contracts for a
02:05 17 long time, right?

02:05 18 A. I have.

02:05 19 Q. For most of the contracts you personally
02:05 20 reviewed between sophisticated parties, do those
02:05 21 contracts typically contain integration clauses?

02:05 22 A. It would depend on the industry. I don't
02:05 23 think they're in M&A contracts. But they're in other
02:05 24 kinds of -- they're also not in a usual sales
02:05 25 contract. But they tend to be in complicated

02:05 1 agreements, such as construction contracts or the
02:06 2 agreements to construct a shopping center contract.

02:06 3 So it would depend on the context.

02:06 4 Sometimes you have one, and sometimes you don't.

02:06 5 Q. Did any of the 1700 contracts you reviewed
02:06 6 or had counsel review in this case not contain
02:06 7 integration clauses?

02:06 8 A. I think -- yes, I think I've seen some that
02:06 9 didn't.

02:06 10 Q. What percentage generally of the contracts?

02:06 11 A. I can't say without going over that sample
02:06 12 again.

02:06 13 Q. Did any of the programmatic sales contracts
02:06 14 identified in your report contain a provision
02:07 15 restricting what someone who purchased XRP from
02:07 16 Ripple's counterparty could do with the XRP they
02:07 17 purchased?

02:07 18 MR. FIGEL: Objection.

02:07 19 A. No, I don't think so.

02:07 20 No.

02:07 21 Q. Did you review any contracts between Ripple
02:07 22 and GSR where Ripple contracted with GSR to purchase
02:07 23 XRP in the secondary market?

02:07 24 A. I don't recall that.

02:07 25 Q. Did you consider any such contract in

02:07 1 forming your opinions?

02:07 2 A. I don't think so.

02:08 3 Q. Okay. Paragraph 105 discusses the
02:08 4 market-making contracts.

02:08 5 MR. HANAUER: Can you send around 11,
02:08 6 please.

02:08 7 (████ Agreement was marked Exhibit AS-11 for
02:08 8 identification, as of this date.)

02:08 9 A. I think I have -- okay.

02:08 10 Q. Is Exhibit 11 a copy of the █████ agreement
02:08 11 referenced in paragraph 105 of your report?

02:09 12 A. I think so.

02:09 13 Q. Any reason why you would say Exhibit 11 is
02:09 14 not a copy of the █████ agreement referenced in
02:09 15 paragraph 105 of your report?

02:09 16 A. No.

02:09 17 Q. When you looked at the market-making
02:09 18 contracts, did you do anything to determine that the
02:10 19 contracts you reviewed were the only contracts
02:10 20 governing the commercial relationship between Ripple
02:10 21 and its counterparty?

02:10 22 A. No.

02:10 23 Q. Independent of this case, have you reviewed
02:10 24 any contracts involving a market maker?

02:10 25 MR. FIGEL: Objection.

02:10 1 A. In my life?

02:10 2 Q. Yeah.

02:10 3 A. I can't remember. Probably, but I can't
02:10 4 remember for sure.

02:10 5 Q. Can you name any today as you sit here
02:10 6 today?

02:10 7 A. No.

02:10 8 Q. Are you offering any opinion on how
02:10 9 Exhibit 11 is different or similar than any other
02:10 10 contract involving a securities market maker?

02:10 11 MR. FIGEL: Objection.

02:10 12 A. No, I'm not.

02:11 13 Q. By contracting with market makers, did
02:11 14 Ripple help facilitate the trading of XRP?

02:11 15 MR. FIGEL: Objection.

02:11 16 A. I can infer such an intention from the
02:11 17 agreement.

02:11 18 Other than that, I don't have an answer.

02:11 19 Q. What is the job of a market maker?

02:11 20 A. To make a market.

02:11 21 Q. And does making that market help facilitate
02:11 22 trading in whatever is being sold?

02:11 23 A. Yes.

02:11 24 Q. By contracting with market makers, did
02:11 25 Ripple help provide investors with a mechanism to

02:11 1 sell XRP at a profit?

02:11 2 MR. FIGEL: Objection.

02:11 3 MS. PROSTKO: Objection.

02:11 4 A. I'm going to resist the last part of your
02:11 5 question. They -- it provided an opportunity to
02:12 6 trade XRP. Whether at a profit or not, I have no
02:12 7 idea.

02:12 8 Q. So by contracting with market makers,
02:12 9 Ripple provided an opportunity for traders to trade
02:12 10 in XRP?

02:12 11 MR. FIGEL: Objection.

02:12 12 A. That is the purpose of -- of these
02:12 13 agreements.

02:12 14 Q. And do you see on Exhibit 11 how the
02:12 15 agreement talks about a defined spread and a
02:12 16 deployment amount?

02:12 17 A. Yes.

02:13 18 Q. Did the other market-making contracts you
02:13 19 reviewed contain similar provisions?

02:13 20 A. I can't recall right now.

02:13 21 Q. In paragraph 108 of your report, you say
02:13 22 that the market-making contract provides that Ripple
02:13 23 will deliver [REDACTED] --

02:13 24 A. Yes.

02:13 25 Q. -- to GSS?

02:13 1 A. Yes.

02:13 2 Q. Is that [REDACTED], is that
02:13 3 compensation to [REDACTED], or is that for [REDACTED] to use in its
02:13 4 market-making activities?

02:13 5 MR. FIGEL: Objection.

02:14 6 A. The contract defines it as compensation.

02:14 7 Q. Is there any restrictions in the [REDACTED]
02:14 8 agreement on what [REDACTED] can do with the [REDACTED]
02:14 9 it obtained from Ripple?

02:14 10 A. I don't recall any such restrictions.

02:14 11 Q. And since [REDACTED] is obtaining [REDACTED]
02:14 12 as compensation, does that incentivize [REDACTED] to make a
02:14 13 market for XRP at a higher price?

02:14 14 MR. FIGEL: Objection.

02:15 15 A. That's payment for GSR to make a market,
02:15 16 which is to say it's payment for GSR to do what they
02:15 17 do.

02:15 18 Q. GSS?

02:15 19 A. GSS, that is.

02:15 20 Q. So --but now -- once [REDACTED] -- once [REDACTED]
02:15 21 obtains that [REDACTED] --

02:15 22 A. Right.

02:15 23 Q. -- it's in GSS's interest for that XRP to
02:15 24 be worth more.

02:15 25 MR. FIGEL: Objection.

02:15 1 A. Not necessarily.

02:15 2 Q. Why do you say that?

02:15 3 A. Because if their intention is to convert it
02:15 4 immediately into dollars, they only care about the
02:15 5 price at the time they get it.

02:16 6 Q. Do you know what [REDACTED]'s intentions were to
02:16 7 do with the [REDACTED] it obtained from -- or
02:16 8 [REDACTED] XRP it obtained from Ripple?

02:16 9 A. No.

02:16 10 Q. So can you look at paragraph 111 of your
02:16 11 report.

02:16 12 Again, I'd ask you to compare that with
02:16 13 paragraph 102.

02:16 14 And it looks like paragraph 102 contains a
02:16 15 bullet point that paragraph 111 does not, that
02:16 16 says -- discusses provisions that create an ongoing
02:17 17 obligation owed by Ripple to the counterparty?

02:17 18 A. Yes.

02:17 19 Q. Did you find any such provisions in the GSS
02:17 20 contract or market maker contracts?

02:17 21 A. No.

02:17 22 Q. So, again, why were you listing five bullet
02:17 23 points in paragraph 102 but only four bullet points
02:17 24 in paragraph 111?

02:17 25 A. I can't recall why I did that, but I do

02:17 1 know that there's no such language in Exhibit 10.

02:17 2 Q. What about Exhibit 11?

02:17 3 A. Which one is -- oh, Exhibit 11?

02:17 4 I don't -- I have -- 5, 4 -- oh. This

02:18 5 is -- this is Exhibit 10.

02:18 6 MR. FIGEL: Is that --

02:18 7 A. You referred to Exhibit 11, I don't think I

02:18 8 have an Exhibit 11.

02:18 9 MR. FIGEL: I think it's in front of right

02:18 10 there.

02:18 11 A. There's Exhibit 10.

02:18 12 Oh, this is Exhibit -- no, I didn't see

02:18 13 anything in that agreement either.

02:18 14 MR. FIGEL: Just so the record's clear, do

02:18 15 you have Exhibit 11?

02:18 16 THE WITNESS: I do. It's right here.

02:18 17 MR. HANAUER: Mr. Court Reporter, was I

02:18 18 asking a question about -- an authentication question

02:18 19 on Exhibit 11? Just to make sure I have it.

02:18 20 (The record was read back.)

02:19 21 Q. Okay. Sorry about that, sir.

02:19 22 Just so I have this in the record, is

02:19 23 Exhibit 11 an accurate copy of the GSS agreement

02:19 24 referenced in paragraph 105 of your report?

02:19 25 A. Yes.

02:19 1 Q. Thank you.

02:19 2 Did any of the market maker contracts you
02:19 3 reviewed contain a provision restricting what someone
02:19 4 who purchased XRP from the market maker could do with
02:19 5 the XRP they purchased?

02:20 6 MR. FIGEL: Objection.

02:20 7 A. No.

02:20 8 MR. HANAUER: Exhibit 12.

02:20 9 (Copy of Azimo Agreement was marked Exhibit
02:20 10 AS-12 for identification, as of this date.)

02:20 11 Q. While we're passing out exhibits, I will
02:20 12 ask you to refer to paragraph 116 of your report.

02:20 13 And once you've had a chance to review
02:20 14 Exhibit 12 I'll ask you, is Exhibit 12 a copy of the
02:20 15 Azimo agreement referenced in paragraph 116 of your
02:20 16 report?

02:20 17 A. Yes.

02:20 18 Q. And when you looked at the product
02:21 19 incentive contracts, did you do anything to determine
02:21 20 that the contracts you reviewed were the only
02:21 21 contracts governing the commercial relationship
02:21 22 between Ripple and its counterparty?

02:21 23 A. No.

02:21 24 Q. What is Azimo?

02:21 25 (Witness reviewing document.)

02:21 1 A. Azimo is a company that -- well, I must
02:21 2 say, I don't know very much about Azimo, but it
02:21 3 essentially does transactions in cryptocurrency in
02:22 4 various markets.

02:22 5 Q. Do you know what type -- type or -- of
02:22 6 transactions or the purpose of the transactions?

02:22 7 A. No.

02:22 8 Q. And do you see how the preamble to
02:22 9 Exhibit 12 references a master-hosted services
02:22 10 agreement between Ripple and Azimo?

02:22 11 A. Are you referring to my report or to
02:22 12 Exhibit 12?

02:22 13 Q. Exhibit 12. The preamble to Exhibit 12.

02:22 14 A. Yes.

02:22 15 Q. Did you review the master-hosted services
02:22 16 agreement between Ripple and Azimo?

02:22 17 A. I don't recall doing so.

02:22 18 Q. Do you know if Azimo was a user of Ripple's
02:23 19 ODL product?

02:23 20 A. I don't know whether it was or wasn't.

02:23 21 Q. Are you offering an opinion whether --
02:23 22 okay. Let me try and help you out with this. Let's
02:23 23 look at paragraph 117.

02:23 24 Can you just read that to yourself.

02:23 25 A. Yes.

02:23 1 Oh, yes. Yeah. It -- that's -- I now --
02:23 2 it has refreshed my recollection.

02:23 3 Q. Okay. So I'll ask you again, was Azimo a
02:23 4 user of Ripple's ODL product?

02:23 5 A. Yes.

02:23 6 Q. And you say that -- in paragraph 117, you
02:24 7 say, Ripple purchases services from Azimo in exchange
02:24 8 for payment.

02:24 9 A. Yes.

02:24 10 Q. Does Azimo also purchase services from
02:24 11 Ripple?

02:24 12 A. Well, if it's using the ODL product, it
02:24 13 must purchase services, but I was referring to the
02:24 14 particular contract in Exhibit 12.

02:24 15 Q. And you reference, in paragraph 117, how
02:24 16 the [REDACTED] agreement obligates Ripple to pay [REDACTED] million
02:24 17 in XRP -- \$[REDACTED] million worth of XRP --

02:24 18 A. Yes.

02:24 19 Q. -- in exchange for Azimo meeting certain
02:24 20 milestones?

02:24 21 A. Not milestones. Well, yes, incentive
02:24 22 milestones, but then it's later defined in particular
02:25 23 as a number of transactions.

02:25 24 Q. Are you offering an opinion whether it
02:25 25 would be commercially viable for Azimo to use ODL

02:25 1 absent the incentives paid by Ripple?

02:25 2 MR. FIGEL: Objection.

02:25 3 A. No.

02:25 4 Q. Can you look at paragraph -- or Section 4,
02:25 5 Exhibit A to Exhibit 12.

02:26 6 It's part of Exhibit 12 with a Bates number
02:26 7 ending in 182.

02:26 8 A. Yes, I'm looking at that now.

02:26 9 Q. And do you see that Azimo acknowledges that
02:26 10 virtual currency, including XRP, is not legal tender?

02:26 11 A. Yes.

02:26 12 Q. Did any of the contracts you reviewed treat
02:26 13 XRP as either fiat currency or legal tender?

02:26 14 MR. FIGEL: Objection.

02:26 15 A. No, I don't recall seeing any such
02:26 16 provisions.

02:26 17 Q. Do you have an opinion whether XRP is
02:26 18 either legal tender or fiat currency?

02:27 19 MR. FIGEL: Objection.

02:27 20 A. I don't think it's either one.

02:27 21 Q. So paragraph 124 of your report references
02:27 22 an agreement with -- references the [REDACTED]
02:27 23 pilot agreement.

02:28 24 Do you see that?

02:28 25 A. Uh-huh.

02:28 1 Q. And you conclude paragraph 124 by writing,
02:28 2 Ripple agrees to pay [REDACTED], on a monthly basis,
02:28 3 [REDACTED] of the aggregate value of XRP purchased or
02:28 4 sold by [REDACTED] on Bitstamp using its algorithm?

02:28 5 A. Yes.

02:28 6 Q. By contracting with [REDACTED], did Ripple help
02:28 7 facilitate the trading of XRP?

02:28 8 MR. FIGEL: Objection.

02:28 9 A. I don't know. That's a question of fact as
02:28 10 to the effect of the agreement. I don't have any
02:28 11 opinion on the effect of any of these agreements.

02:29 12 Q. Going back to Azimo, what purchases -- or
02:29 13 what services did Ripple purchase from Azimo?

02:29 14 MR. FIGEL: Objection.

02:29 15 A. To use Ripple in -- to use XRP in
02:29 16 transactions in the specified markets. Specified
02:29 17 countries, actually.

02:29 18 Q. Did Ripple pay Azimo to buy and sell XRP in
02:29 19 the market?

02:29 20 MR. FIGEL: Objection.

02:29 21 A. I don't recall any contract provisions to
02:29 22 that effect.

02:29 23 Q. And again, you did not review the master
02:29 24 services agreement between Ripple and Azimo?

02:30 25 A. I don't recall reviewing that particular

02:30 1 one.

02:30 2 Q. Can you look at paragraph 131, please.

02:30 3 And do you see how you write, the --

02:30 4 Specifically the product incentive contracts

02:30 5 typically contain, and then there are two bullet

02:31 6 points?

02:31 7 A. Uh-huh.

02:31 8 Q. So, similar question to what I was asking

02:31 9 you earlier about the integration clause. Is it

02:31 10 the -- are you -- are you saying that all of the

02:31 11 products incentive contracts had the two provisions

02:31 12 listed in the bullet points on paragraph 31, or are

02:31 13 you saying that those two provisions are what make

02:31 14 the product incentive contracts similar in substance?

02:31 15 MR. FIGEL: Objection.

02:31 16 A. What makes the contracts similar are the

02:31 17 clauses they have in common and the clauses that they

02:31 18 in common lack. So I'm not basing similarity on any

02:31 19 particular term.

02:31 20 Q. Would you be able to find provision -- are

02:32 21 the two provisions listed in -- on the bullet points

02:32 22 in paragraph 131, are those common provisions in

02:32 23 contracts in a whole variety of industries?

02:32 24 A. I guess I would answer it in this way.

02:32 25 With a lot of contracts, there is -- there

02:32 1 are few or no precontractual communications between
02:32 2 parties. Example, in a typical sales contract, if
02:32 3 you want to ship TVs to a retailer, they're sold
02:32 4 under a standard contract, then retailer takes the
02:32 5 contract or it doesn't.

02:32 6 In other areas, there are discussions prior
02:32 7 to the making of a contract. And that -- it's --
02:33 8 that creates an incentive to use a merger clause in
02:33 9 order to ensure that the enforceable promises people
02:33 10 make are in their written contract.

02:33 11 Q. Did any of the product incentive contracts
02:33 12 identified in your report contain a provision
02:33 13 restricting what someone who purchased XRP from
02:33 14 Ripple's counterparty could do with the XRP they
02:33 15 purchased?

02:33 16 MR. FIGEL: Objection.

02:33 17 A. No.

02:33 18 Q. Did any contract identified in your report
02:33 19 contain a provision restricting what someone who
02:33 20 purchased XRP from Ripple's counterparty could do
02:33 21 with the XRP they purchased?

02:33 22 MR. FIGEL: Objection.

02:33 23 A. No. Maybe this is volunteering, but you
02:34 24 couldn't bind a party who wasn't -- an agent who
02:34 25 wasn't a party to a contract to do or not do things.

02:34 1 Q. So, it would have been impossible for
02:34 2 Ripple to put restrictions on what the purchaser of
02:34 3 XRP from one of Ripple's counterparties could do with
02:34 4 the XRP purchased from the counterparty?

02:34 5 MR. FIGEL: Objection.

02:34 6 A. Well, Ripple could do what it did do. It
02:34 7 could require the buyer of XRP to restrict the use by
02:34 8 parties down in the distribution chain.

02:34 9 And I think I recall provisions saying that
02:34 10 the buyer wouldn't sell to anyone who had an
02:34 11 investment purpose or the like.

02:35 12 But the most you could do is -- is to have
02:35 13 your -- is to require your counterparty to make
02:35 14 transactions with nonparties under certain terms so
02:35 15 that if the counterparty didn't do that, you could
02:35 16 sue the counterparty.

02:35 17 Q. Did any of Ripple's contracts identified in
02:35 18 your report bind third parties that were not Ripple's
02:35 19 counterparties?

02:35 20 MR. FIGEL: Objection.

02:35 21 A. No.

02:35 22 Q. Can we go to paragraph 135 where you talk
02:35 23 about the employee and executive compensation
02:36 24 contract.

02:36 25 A. Yes.

02:36 1 MR. HANAUER: Bless you.

02:36 2 Q. Did any of the employee and executive
02:36 3 compensation contracts contain a restriction on what
02:36 4 the Ripple employee or executive could do with the
02:36 5 XRP they obtained from Ripple?

02:36 6 MR. FIGEL: Objection.

02:36 7 A. I don't think so.

02:36 8 Q. Did you review any of Defendant
02:37 9 Garlinghouse's employee executive compensation
02:37 10 contracts with Ripple?

02:37 11 A. No.

02:37 12 Q. Did you review any of Defendant
02:37 13 Garlinghouse's contracts between him and Ripple?

02:37 14 A. No.

02:37 15 Q. Did you consider any of Defendant
02:37 16 Garlinghouse's contracts in forming your opinions?

02:37 17 A. No.

02:38 18 Q. Could you go to paragraph 144 of your
02:38 19 report, please.

02:38 20 (MoneyGram Agreement was marked Exhibit
02:38 21 AS-15 for identification, as of this date.)

02:38 22 Q. Is Exhibit 15 a copy of the MoneyGram
02:38 23 agreement referenced in paragraph 144 of your report.

02:38 24 A. Yes.

02:38 25 Q. And when you looked at the master-hosted

02:39 1 services agreements, did you do anything to determine
02:39 2 that the contracts you reviewed were the only
02:39 3 contracts governing the commercial relationship
02:39 4 between Ripple and its counterparty?

02:39 5 A. No.

02:39 6 Q. Why was Ripple contracting with MoneyGram?

02:39 7 MR. FIGEL: Objection.

02:39 8 A. I don't know why, as a matter of fact, they
02:39 9 were contracting with MoneyGram.

02:39 10 Q. And do you see how -- or can I refer you to
02:39 11 paragraph 147 of your report.

02:39 12 A. Uh-huh.

02:40 13 Q. Do you see how that discusses Ripple paying
02:40 14 rebates to MoneyGram?

02:40 15 A. Yes.

02:40 16 Q. Are you offering an opinion whether it
02:40 17 would be commercially viable for MoneyGram to use
02:40 18 Ripple's products, if not for the rebates and
02:40 19 incentives Ripple offered?

02:40 20 MR. FIGEL: Objection.

02:40 21 A. No.

02:41 22 Q. Can I refer you to paragraph 160 of your
02:41 23 report, please.

02:41 24 (Loan Agreement was marked Exhibit AS-16
02:41 25 for identification, as of this date.)

02:41 1 Q. Before I ask you about the loan agreements,
02:41 2 we just looked at the Azimo agreement and the
02:41 3 MoneyGram agreement.

02:41 4 A. Yes.

02:41 5 Q. Why did you put them in different
02:41 6 categories?

02:41 7 A. Because the loan is a different transaction
02:41 8 from --

02:41 9 Q. I'm sorry. And I'm not trying to be
02:41 10 confusing or anything like that.

02:41 11 A. No.

02:41 12 Q. Before we get to the loan agreements, I
02:41 13 want to refer back to the last two sets of agreements
02:41 14 we looked at, the MoneyGram agreement and the Azimo
02:41 15 agreement.

02:41 16 And my question is, why did you put them
02:42 17 into different categories?

02:42 18 A. The -- because they had different
02:42 19 commercial purposes.

02:42 20 The Azimo agreement, at least as I infer
02:42 21 from the words, was an agreement in which Azimo is
02:42 22 being paid to conduct certain transactions.

02:42 23 In the MoneyGram agreement, MoneyGram was
02:42 24 using a service that Ripple provided. So they were
02:42 25 different deals.

02:42 1 Q. Do you know if Azimo used a service that
02:42 2 Ripple provided?

02:42 3 A. I don't know any more than what the
02:42 4 contract says.

02:42 5 Q. The contract that you reviewed says?

02:42 6 A. Yes.

02:43 7 Q. So do you see Exhibit 16 in front of you?

02:43 8 A. I do.

02:43 9 Q. Is Exhibit 16 a copy of the loan agreement
02:43 10 referenced in paragraph 160 of your report?

02:43 11 A. Yes.

02:43 12 Q. What is [REDACTED] or [REDACTED]?

02:44 13 A. I'm not sure what [REDACTED] is.

02:44 14 Q. Do you know what their -- what [REDACTED]
02:44 15 business is?

02:44 16 A. Not right now, no.

02:44 17 Q. Do you know what the businesses of the
02:44 18 other counterparties to the loan agreements
02:44 19 identified in your report are?

02:44 20 A. I don't recall.

02:44 21 Q. Do you know what the purpose of the loans
02:44 22 identified in your report were?

02:44 23 A. I think [REDACTED] -- [REDACTED] is a financial
02:44 24 services company, which is about all I know about it.

02:45 25 I would infer from looking at the agreement

02:45 1 that the goal was to have [REDACTED] use XRP, but I
02:45 2 don't know that as a matter of fact.

02:45 3 Q. Was the loan agreement with [REDACTED]
02:45 4 related to a broader commercial relationship between
02:45 5 Ripple and [REDACTED]?

02:45 6 MR. FIGEL: Objection.

02:45 7 A. I don't know that.

02:45 8 Q. Were -- do you know if any of the other
02:45 9 loan agreements identified in your report were part
02:45 10 of larger commercial relationships between Ripple and
02:45 11 the counterparty?

02:45 12 A. I don't know that.

02:45 13 Q. Do you know if Ripple paid [REDACTED]
02:45 14 incentives, bonuses, or rebates as part of a broader
02:45 15 commercial relationship?

02:45 16 MR. FIGEL: Objection.

02:46 17 A. No.

02:46 18 Q. Do you know if Ripple paid the other loan
02:46 19 and promissory note counterparties bonuses,
02:46 20 incentives, or rebates as part of a larger commercial
02:46 21 relationship?

02:46 22 A. No.

02:46 23 Q. Did Ripple reimburse [REDACTED] for the --
02:46 24 for the interest Ripple charged on the loan?

02:46 25 MR. FIGEL: Objection.

02:46 1 A. Well, there's no contractual obligation for
02:46 2 Ripple to do that. If -- at least no contractual
02:47 3 obligation under the digital asset loan agreement.

02:47 4 Q. Do you know if Ripple reimbursed [REDACTED]
02:47 5 for the interest it charged on the loan?

02:47 6 A. No.

02:47 7 Q. Do you know if Ripple reimbursed any other
02:47 8 of the loan or promissory note counterparties for the
02:47 9 interest it charged?

02:47 10 A. No.

02:47 11 Q. Did the loan -- the [REDACTED] loan agreement
02:47 12 contain a provision restricting what [REDACTED] could
02:47 13 do with the XRP Ripple loaned it?

02:47 14 A. Such a restriction would -- is not in the
02:47 15 contract.

02:47 16 Q. Did any other of the loans or promissory
02:47 17 notes identified in your report contain restrictions
02:47 18 on what Ripple's counterparty could do with the XRP?

02:48 19 A. I don't recall seeing any of them in this
02:48 20 type of agreement.

02:48 21 Q. May I direct your attention to
02:48 22 paragraph 170, please.

02:48 23 ([REDACTED] Custody Agreement was marked Exhibit
02:48 24 AS-17 for identification, as of this date.)

02:48 25 Q. And Exhibit 17, is that a copy of the [REDACTED]

02:49 1 custody agreement referenced in paragraph 170 of your
02:49 2 report?

02:49 3 A. Yes.

02:49 4 Q. When you looked at the custody agreements
02:49 5 referenced in your report, did you do anything to
02:49 6 determine that those agreements that you reviewed
02:49 7 were the only contracts governing the commercial
02:49 8 relationship between Ripple and its counterparty?

02:49 9 A. No.

02:49 10 Q. So the counterparty to the [REDACTED] custody
02:49 11 agreement is an entity called [REDACTED]

02:49 12 A. Yes.

02:49 13 Q. What is their business?

02:49 14 A. I don't know.

02:50 15 Q. Do you know the businesses of any of the
02:50 16 other parties to the custody agreements identified in
02:50 17 your report?

02:50 18 A. I don't recall.

02:50 19 Q. And do you know what the purpose was of the
02:50 20 [REDACTED] custody agreement?

02:50 21 MR. FIGEL: Objection.

02:50 22 A. The customer had purchased XRP. And it
02:50 23 wanted Ripple to essentially hold it for them, to be
02:50 24 the custodian of it for them rather than take
02:50 25 possession themselves.

02:50 1 Q. And do you know what [REDACTED].

02:50 2 intended to do with the XRP Ripple loaned it?

02:51 3 MR. FIGEL: Objection.

02:51 4 A. No.

02:51 5 I think -- no, I don't.

02:51 6 Q. And was the [REDACTED] custody agreement
02:51 7 substantially similar to the other custody agreements
02:51 8 you reviewed?

02:51 9 A. Yes.

02:51 10 Q. So the [REDACTED] custody agreement lays out the
02:51 11 terms for Ripple to custody XRP that [REDACTED] had
02:51 12 previously purchased from Ripple?

02:51 13 A. That is my understanding.

02:52 14 Q. And why did [REDACTED] originally buy XRP
02:52 15 from Ripple?

02:52 16 MR. FIGEL: Objection.

02:52 17 A. I don't know.

02:52 18 Q. Can I ask you to look at paragraph 8 of
02:52 19 Exhibit 17.

02:52 20 A. Uh-huh.

02:52 21 Q. And after that first romanette, is [REDACTED]
02:52 22 [REDACTED] representing that its holding the XRP for
02:52 23 investment purposes?

02:53 24 A. It's representing it has the authority to
02:53 25 hold XRP for investment purposes.

02:53 1 Q. And do you know whether or not [REDACTED]
02:53 2 was, in fact, holding XRP for investment purposes?

02:53 3 A. No.

02:53 4 Q. How many of the other custody agreements
02:53 5 contained a similar provision where the counterparty
02:53 6 represented that it is authorized to hold XRP for
02:53 7 investment purposes?

02:53 8 A. I think they all did.

02:53 9 Q. Was the [REDACTED] custody agreement related to a
02:53 10 broader commercial relationship between Ripple and
02:53 11 [REDACTED]?

02:53 12 A. I don't know that.

02:53 13 Q. Were the other custody agreements
02:53 14 identified in your report part of -- strike that.

02:54 15 Did you review any other contracts,
02:54 16 reflecting a broader commercial relationship between
02:54 17 Ripple and the counterparties to the other custody
02:54 18 agreements identified in your report?

02:54 19 MR. FIGEL: Objection.

02:54 20 A. No.

02:54 21 Q. Do you know if Ripple paid [REDACTED]
02:54 22 incentives, bonuses, or rebates?

02:54 23 MR. FIGEL: Objection.

02:54 24 A. No, I don't know whether they did or not.

02:54 25 Q. Do you know if Ripple paid incentives,

02:54 1 bonuses, or rebates to the other counterparties of
02:54 2 the custody agreements?

02:54 3 MR. FIGEL: Objection.

02:54 4 A. No.

02:54 5 Q. Did the [REDACTED] custody agreement contain a
02:54 6 provision restricting what [REDACTED] could do with
02:55 7 the XRP that Ripple custodied?

02:55 8 A. No.

02:55 9 Q. Did the other custody agreements identified
02:55 10 in your report contain provisions restricting what
02:55 11 Ripple's counterparty could do with the XRP?

02:55 12 A. Not to my knowledge.

02:55 13 Q. How are you doing on breaks?

02:55 14 A. Doing okay.

02:55 15 Q. Doing okay. All right. Let's keep going.

02:55 16 Can I ask you to look at page -- I'm sorry,
02:55 17 paragraph 178 of your report.

02:56 18 And you reference that Rippleworks is a
02:56 19 charitable organization that provides grants and
02:56 20 other funding to Social Impact Ventures?

02:56 21 A. Yes.

02:56 22 Q. What is your basis for saying that?

02:56 23 A. I think that -- that they were identified
02:56 24 as such in the contract.

02:56 25 MR. HANAUER: Let's do Exhibit 18.

02:56 1 (Copy of Custody Agreement was marked
02:56 2 Exhibit AS-18 for identification, as of this
02:56 3 date.)

02:57 4 Q. Is Exhibit 18 a custody -- a copy of the
02:57 5 custody agreement identified in paragraph 178 of your
02:57 6 report?

02:57 7 A. Yes.

02:57 8 Q. I'll -- I'll return to my question, and --
02:57 9 and what is your basis for saying that Rippleworks is
02:57 10 a charitable organization that provides grants and
02:57 11 funding to Social Impact Ventures?

02:57 12 A. It's described as a foundation. Foundation
02:58 13 is not a profit-making company. So foundation's
02:58 14 usually charitable companies, which essentially make
02:58 15 grants.

02:58 16 I might have learned, in conversation about
02:58 17 this case, about Social Impact Ventures. But it
02:58 18 was -- and I don't recall where I heard that, but it
02:58 19 was clear to me that -- just from reading the
02:58 20 agreement that we were not talking about a
02:58 21 profit-making enterprise as a counterparty.

02:58 22 Q. Did you write the words, "A charitable
02:58 23 organization that provides grants and other funding
02:58 24 to Social Impact Ventures"?

02:58 25 A. Yes, I did.

02:58 1 Q. Are you aware that the amended complaint in
02:58 2 this case alleges that Ripple and the individual
02:58 3 defendants used Rippleworks as a mechanism to achieve
02:59 4 Ripple's goal of distributing XRP into the public
02:59 5 trading market and increase trading in XRP?

02:59 6 A. I'm not aware of that.

02:59 7 Q. Are you offering any opinion that
02:59 8 challenges those allegations?

02:59 9 A. I don't have an opinion one way or the
02:59 10 other.

02:59 11 Q. Are you offering any opinion challenging
02:59 12 the amended complaint's -- strike that.

02:59 13 Are you offering any opinion challenging
02:59 14 any of the amended complaint's allegations relating
02:59 15 to Rippleworks?

02:59 16 MR. FIGEL: Objection.

02:59 17 A. I would have to know what they were.

02:59 18 Q. Well, you did review the complaint, the
02:59 19 amended complaint, correct?

02:59 20 A. Yes.

02:59 21 Q. And as you sit here today, are you refuting
03:00 22 any of the allegations about Rippleworks?

03:00 23 A. No, that's not in my report. I don't have
03:00 24 any -- any expert opinion on what Ripple and
03:00 25 Rippleworks did.

03:00 1 Q. Did the Rippleworks cus-- did Exhibit 18,
03:00 2 did that contain a -- does that contain a provision
03:00 3 restricting what Rippleworks can do with the XRP
03:00 4 Ripple custody?

03:00 5 A. No.

03:00 6 Q. Can you look at your report, paragraph 188,
03:00 7 please.

03:00 8 So do you see how paragraph 188 references
03:01 9 settlement agreements involving Ripple on one hand,
03:01 10 and on the other hand, R3 HoldCo, Jed McCabe [sic],
03:01 11 Arthur Britto, Greg Kidd, and Matthew Mellon?

03:01 12 A. Yes.

03:01 13 Q. Were those the only parties to settlement
03:01 14 agreements that you reviewed?

03:01 15 A. I think so.

03:02 16 Q. So in Exhibit 5 to your report, it looks
03:02 17 like there could be more than a hundred settlement
03:02 18 agreements.

03:02 19 A. I don't know how many there were.

03:02 20 Q. Well, you can look at Exhibit F to your
03:02 21 report.

03:02 22 A. Yeah, I -- there were a lot of them. I
03:02 23 don't -- you asked me, once again, about a specific
03:02 24 number. I don't have a specific number.

03:02 25 Q. And did the -- the settlement agreements

03:02 1 on -- identified in Exhibit F to your report, did all
03:02 2 of those settlement agreements involve either
03:02 3 R3 HoldCo, Jed McCabe, Arthur Britto, Greg Kidd or
03:02 4 Matthew Mellon?

03:03 5 A. I think so.

03:03 6 I don't recall any other parties.

03:03 7 Q. Why were there so many settlement
03:03 8 agreements for only a handful of counterparties?

03:03 9 MR. FIGEL: Objection.

03:03 10 A. I don't know.

03:03 11 Q. Did you review all the settlement
03:03 12 agreements contained on Exhibit F to your report?

03:03 13 A. If they were an exhibit to my report, I
03:03 14 looked at them, or most of them, or almost all of
03:03 15 them.

03:03 16 Q. After you signed your report.

03:03 17 A. Some before, more after.

03:04 18 Q. For R3 HoldCo, what is that company's
03:04 19 business?

03:04 20 A. I'm not sure.

03:04 21 Q. And do you know what the purpose was of
03:04 22 R3 HoldCo's original contractual relationship with
03:04 23 Ripple?

03:04 24 A. No.

03:04 25 Q. Do you know what Arthur Britto or Greg

03:04 1 Kidd's relationship was with Ripple?

03:04 2 A. No.

03:05 3 Q. What about Matthew Mellon?

03:05 4 A. I know that Matthew Mellon was supposed to
03:05 5 provide certain services to Ripple.

03:05 6 Q. What services were those?

03:05 7 A. The contract describes them as ambassador
03:05 8 services.

03:05 9 Q. Are you able to fill in any more details on
03:05 10 what those ambassador services entailed?

03:05 11 A. No.

03:05 12 Q. Did any of the settlement agreements
03:05 13 identified in your report contain a provision
03:05 14 restricting what Ripple's counterparty could do with
03:05 15 the XRP Ripple provided?

03:05 16 MR. FIGEL: Objection.

03:05 17 A. I don't think so.

03:06 18 Q. So in paragraph 191, you say that the R3
03:06 19 option sets out terms pursuant to which XRP2 grants
03:06 20 R3 HoldCo the right to purchase up 5 billion units of
03:06 21 XRP at a per-unit price of .8 -- of .85 cents.

03:06 22 Is that correct?

03:06 23 A. Yeah.

03:06 24 Q. And you understood XRP2 to be a subsidiary
03:06 25 of Ripple?

03:06 1 A. Yes.

03:06 2 Q. Is the option to purchase point -- XRP at
03:06 3 .85 cents per unit, is that a significant discount to
03:07 4 Ripple's market price?

03:07 5 MR. FIGEL: Objection.

03:07 6 A. I don't know the answer to that.

03:07 7 Q. If you were to assume that .85 cents per
03:07 8 unit was a significant discount to market price, did
03:07 9 the R3 option allow R3 HoldCo to profit from the XRP
03:07 10 it obtain-- purchased from Ripple if it immediately
03:07 11 sold that XRP into the market?

03:07 12 MR. FIGEL: Objection.

03:07 13 A. That's a two -- maybe you could break that
03:07 14 question down into two, because that was a pretty
03:07 15 long question.

03:07 16 Q. Okay. So the first part is the -- I asked
03:08 17 you if the -- the option price was a significant
03:08 18 discount to market price.

03:08 19 A. I said I didn't know the answer to that.

03:08 20 Q. Fair enough.

03:08 21 Now I'm asking you to assume that it was a
03:08 22 significant discount to market price.

03:08 23 A. Yes.

03:08 24 Q. If that's the case, does the R3 option
03:08 25 allow Ripple's counterparty to profit off the XRP it

03:08 1 purchased from Ripple if it turns around and sells
03:08 2 that XRP at market price?

03:08 3 MR. FIGEL: Objection.

03:08 4 A. Well, I mean, if -- if I could sell
03:08 5 something at \$10 a unit in the market and you're
03:08 6 charging me \$2 for it, I'm going to make \$8 if I
03:08 7 resell it. That seems to be -- so it's certainly --
03:08 8 what you say is a possibility.

03:08 9 But in other words, this -- so far as I can
03:08 10 tell, these were -- this is another way to make a --
03:09 11 to make a payment pursuant to a settlement agreement.

03:09 12 So instead of giving you a hundred dollars,
03:09 13 I give you the right to buy an asset for 50 you can
03:09 14 sell at a hundred dollars. It seems as if that
03:09 15 was -- that there was just a settlement and that's
03:09 16 the way that R3 HoldCo is partially compensated. But
03:09 17 that's all I know about it.

03:09 18 Q. Would it make commercial sense for
03:09 19 R3 HoldCo to exercise the R3 option if the market
03:09 20 price of XRP was below .85 cents per unit?

03:09 21 MR. FIGEL: Objection.

03:09 22 A. No.

03:10 23 Q. Did you review -- so can I refer you to
03:10 24 paragraph 204 of your report, please.

03:10 25 A. Yes.

03:10 1 Q. And do you see how you say, In addition to
03:10 2 the R3 HoldCo settlement, I also reviewed the Britto
03:10 3 settlement agreement?

03:10 4 A. Yes.

03:10 5 Q. Did you review any other settlement
03:10 6 agreements other than the ones between RC HoldCo and
03:11 7 Ripple and Arthur Britto and Ripple?

03:11 8 A. I don't recall doing that.

03:11 9 Q. Did you review any settlement agreement
03:11 10 between Ripple and Mr. McCaleb?

03:11 11 A. I don't recall reading that.

03:11 12 Q. Did the Britto settlement agreement allow
03:11 13 Mr. Britto to purchase XRP at a discount to market
03:11 14 price?

03:11 15 MR. FIGEL: Objection.

03:11 16 A. The contract does not give Mr. Britto any
03:11 17 such rights. If there are any extracontractual
03:11 18 rights, I don't know about them.

03:12 19 MR. HANAUER: How are you doing?

03:12 20 THE WITNESS: I'm okay. Well, it's -- we
03:12 21 could take a break for a little while.

03:12 22 MR. FIGEL: I think we should.

03:12 23 MR. HANAUER: Go off the record, please.

03:12 24 THE VIDEOGRAPHER: Off the record, the time
03:12 25 is 3:13.

03:12 1 (A recess was taken from 3:13 to 3:39.)

03:37 2 THE VIDEOGRAPHER: Back on the record. The
03:37 3 time is 3:39. And, Reid, just put your microphone
03:37 4 on.

03:38 5 MR. FIGEL: Thank you.

03:38 6 Q. Professor Schwartz, can I direct you to
03:38 7 paragraph 209 of your report where you're talking
03:38 8 about the Xpring contracts?

03:38 9 A. Yes.

03:38 10 Q. What was the Xpring program?

03:38 11 A. Excuse me?

03:38 12 Q. What was the -- and I'm not sure if I'm
03:38 13 saying this right. What was the Xpring program?

03:38 14 A. It's a program under which Ripple made
03:38 15 investments in other companies and which they
03:38 16 exchanged either cash or XRP for equity or services.

03:38 17 Q. And what's your basis for saying that?

03:38 18 A. The contract -- that's what the contracts
03:38 19 provided.

03:39 20 Q. And do you know what the Xpring
03:39 21 counterparties intended to do with the XRP Ripple
03:39 22 provided them?

03:39 23 A. Do I -- no, I don't know what they intended
03:39 24 to do.

03:39 25 Q. Are you aware that the amended complaint in

03:39 1 this case alleges that Ripple used Xpring as a
03:39 2 mechanism to achieve Ripple's goal of distributing
03:39 3 XRP into the public trading market and increase
03:39 4 trading in XRP?

03:39 5 A. Yes, I'm aware of that.

03:39 6 I want to amend what I said in the [REDACTED]
03:39 7 contract.

03:39 8 THE COURT REPORTER: I'm sorry. In the
03:39 9 what?

03:39 10 THE WITNESS: [REDACTED]

03:39 11 THE COURT REPORTER: Thank you.

03:39 12 A. [REDACTED] promised to -- to develop and
03:40 13 integrate XRP, and to essentially, you know, get X--
03:40 14 increase XRP's use. So...

03:40 15 Q. That was the purpose of [REDACTED] contract
03:40 16 with Ripple?

03:40 17 A. That's what they promised to use best
03:40 18 efforts to do.

03:40 19 Q. So going -- is there anything else you need
03:40 20 to amend or correct?

03:40 21 A. No.

03:40 22 Q. So, I believe you said that you were aware
03:40 23 of the allegations in the amended complaint regarding
03:40 24 Xpring?

03:40 25 A. Yes. I read the amended complaint.

03:40 1 Q. Are you offering any opinion that
03:40 2 challenges the amended complaint's allegations
03:40 3 regarding Xpring?

03:40 4 A. No.

03:40 5 MR. FIGEL: Objection.

03:41 6 Q. Did the Xpring contracts contain a
03:41 7 provision restricting what Ripple's counterparty
03:41 8 could do with the XRP Ripple provided?

03:41 9 A. Not to my recollection.

03:41 10 Q. Did Ripple take any steps to restrict the
03:41 11 Xpring counterparties from reselling the XRP Ripple
03:41 12 provided them to the public?

03:41 13 MR. FIGEL: Objection.

03:41 14 A. No.

03:41 15 Not that -- no.

03:42 16 Q. Can I refer you to paragraph 216 of your
03:42 17 report, please.

03:42 18 So you reference various joint venture
03:42 19 contracts?

03:42 20 A. Yes.

03:42 21 Q. And what did you do to determine that the
03:42 22 joint venture contracts you reviewed were the only
03:42 23 contracts governing the commercial relationship
03:42 24 between Ripple and its counterparty?

03:42 25 A. I didn't do anything.

03:43 1 (Joint Venture Agreement Between Ripple and
03:43 2 SBI was marked Exhibit AS-20 for identification,
03:43 3 as of this date.)

03:43 4 Q. Do you see how Exhibit-- I'm sorry.

03:43 5 Do you see on paragraph 216 of your report
03:43 6 references a joint venture agreement between Ripple
03:43 7 and SBI?

03:43 8 A. Yes.

03:43 9 Q. Is Exhibit 20 a copy of that joint venture
03:43 10 agreement?

03:44 11 A. Yes.

03:44 12 Q. What was the business purpose of the SBI
03:44 13 joint venture?

03:44 14 A. Essentially to distribute or increase
03:44 15 distribution of Ripple, in the territory defined
03:44 16 under agreement.

03:44 17 Q. When you say "increase the distribution of
03:44 18 Ripple," do you mean the distribution of XRP?

03:44 19 A. Yes, the distribution of XRP in Japan,
03:44 20 specifically.

03:44 21 Q. By entering into the joint venture
03:45 22 agreement, did Ripple help facilitate the trading of
03:45 23 XRP?

03:45 24 MR. FIGEL: Objection.

03:45 25 A. The object was to have SBIH, I think it's

03:45 1 SBIH's clients and future clients use XRP.

03:45 2 Q. For what?

03:45 3 A. For whatever purpose that they wanted to
03:45 4 use it.

03:45 5 Q. Are you offering any opinion on what
03:45 6 anybody who obtained XRP from the joint venture
03:45 7 intended to do with it?

03:45 8 MR. FIGEL: Objection.

03:45 9 A. No.

03:45 10 Q. Did the joint venture -- any of the joint
03:45 11 venture agreements contain a provision restricting
03:46 12 what could be done with any of the XRP Ripple
03:46 13 provided?

03:46 14 A. No.

03:46 15 Q. Can you look at paragraph 219 of your
03:46 16 report.

03:47 17 Do see how paragraph 219 of your report
03:47 18 references an entity called [REDACTED]?

03:47 19 A. Yes.

03:47 20 Q. And do you have Exhibit 21 in front of you?

03:47 21 A. Yes.

03:47 22 ([REDACTED] Contract was marked Exhibit AS-21 for
03:47 23 identification, as of this date.)

03:47 24 Q. Is Exhibit 21 one of the [REDACTED] contracts
03:47 25 referenced in paragraph 219?

03:47 1 A. Yes.

03:47 2 Q. And what was the purpose of the
03:48 3 contemplated arrangement between Ripple and [REDACTED]?

03:48 4 A. [REDACTED] was supposed to create a -- a fund and
03:48 5 sell shares in it to investors.

03:48 6 And the fund was going to hold as an asset
03:48 7 XRP.

03:48 8 Q. Is it your understanding that the potential
03:48 9 investors in the XRP fund would seek to profit off
03:48 10 their investment?

03:48 11 MR. FIGEL: Objection.

03:48 12 A. I think everybody seeks to profit off their
03:48 13 investment.

03:48 14 Q. And you write in paragraph 219 that the
03:48 15 parties contemplated that interest in the fund would
03:49 16 be offered and sold in the United States pursuant to
03:49 17 an exemption from registration under the Securities
03:49 18 Act?

03:49 19 A. Yes.

03:49 20 Q. Would the interests in the [REDACTED] fund sold
03:49 21 to investors, would those have been securities under
03:49 22 the federal securities laws?

03:49 23 MR. FIGEL: Objection.

03:49 24 A. I don't have an opinion about that.

03:49 25 Q. Do you know why the [REDACTED] fund was never

03:49 1 established?

03:49 2 A. No.

03:49 3 MR. HANAUER: Can I take one minute to
03:49 4 confer with counsel.

03:49 5 THE VIDEOGRAPHER: Going off the record.
03:49 6 The time is 3:51.

03:50 7 (Discussion off the record.).

03:50 8 THE VIDEOGRAPHER: Back on the record. The
03:50 9 time is 3:51.

03:50 10 MR. HANAUER: Thank you very much,
03:50 11 Professor Schwartz. We have no further questions at
03:50 12 this time.

03:50 13 THE WITNESS: Okay.

03:50 14 MR. FIGEL: And on behalf of Ripple, we
03:50 15 have no questions.

03:50 16 I'm not sure if anyone else on -- do
03:50 17 counsel for the other parties have any questions for
03:50 18 Professor Schwartz?

03:50 19 MS. PROSTKO: No. On behalf of Larsen
03:50 20 defendant, we have no questions, but we thank you
03:50 21 very much for your time today.

03:50 22 MR. BONILLA: I have no questions, for
03:50 23 Defendant Garlinghouse.

03:50 24 MR. HANAUER: Do you do the reserving
03:50 25 signature on the record here in New York?

03:50 1 MR. FIGEL: Yes.

03:50 2 We will just assume it.

03:51 3 MR. HANAUER: Okay. Thank you.

03:51 4 THE VIDEOGRAPHER: That concludes today's
03:51 5 deposition. The time is 3:52.

6 (Time noted: 3:52 p.m.)

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CERTIFICATE OF WITNESS

I, ALAN SCHWARTZ, do hereby declare under penalty of perjury that I have read the entire foregoing transcript of my deposition testimony, or the same has been read to me, and certify that it is a true, correct and complete transcript of my testimony given on February 11, 2022, save and except for changes and/or corrections, if any, as indicated by me on the attached Errata Sheet, with the understanding that I offer these changes and/or corrections as if still under oath.

_____ I have made corrections to my deposition.

_____ I have NOT made any changes to my deposition.

Signed: _____
ALAN SCHWARTZ

Dated this _____ day of _____ of 20____.

C E R T I F I C A T E

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STATE OF NEW YORK)
) Ss.:
COUNTY OF NEW YORK)

I JEFFREY BENZ, a Certified Realtime Reporter,
Registered Merit Reporter and Notary Public within and
for the State of New York, do hereby certify:

That the witness whose examination is hereinbefore
set forth was duly sworn by me and that this transcript
of such examination is a true record of the testimony
given by such witness.

I further certify that I am not related to any of
the parties to this action by blood or marriage and that
I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand
this 14th of February, 2022



JEFFREY BENZ, CRR, RMR

ERRATA SHEET

Deposition of: ALAN SCHWARTZ
 Date taken: FEBRUARY 11, 2022
 Case: SEC v. RIPPLE LABS, INC., et al.

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